Tab 1	**CS/CS/SB 498** by **JU, CM, Young**; (Similar to CS/CS/H 00467) Department of Agriculture and Consumer Services

434084	A	S	RCS	AP, Young	Delete L.170 - 435:	04/26 02:34 PM
209084	A	S	RCS	AP, Young	Delete L.968 - 994:	04/26 02:34 PM
761370	A	S	RCS	AP, Young	Delete L.1097:	04/26 02:34 PM

Tab 2	**CS/SB 512** by **RI, Young (CO-INTRODUCERS) Rouson, Steube**; (Identical to H 00113) Steroid Use in Racing Greyhounds

Tab 3	**CS/SB 876** by **HP, Young (CO-INTRODUCERS) Bean, Rouson**; (Similar to CS/CS/1ST ENG/H 00229) Programs for Impaired Health Care Practitioners

926878	PCS	S	RCS	AP, AHS		04/26 03:13 PM

Tab 4	**SB 1398** by **Stewart (CO-INTRODUCERS) Baxley, Young**; (Similar to CS/CS/CS/H 00727) Accessibility of Places of Public Accommodation

783680	PCS	S	RCS	AP, AGG		04/26 03:31 PM
259196	PCS:D	S	RCS	AP, Stewart	Delete everything after	04/26 03:31 PM

Tab 5	**CS/CS/SB 150** by **JU, CJ, Steube (CO-INTRODUCERS) Baxley, Passidomo, Artiles, Mayfield**; (Similar to CS/H 00477) Controlled Substances

531844	D	S	RS	AP, Steube, Latvala	Delete everything after	04/26 01:43 PM
145864	SD	S	RCS	AP, Steube, Benacquisto	Delete everything after	04/26 01:43 PM
~~355094~~	AA	S	WD	AP, Brandes	btw L.1524 - 1525:	04/26 01:43 PM

Tab 6	**CS/SB 330** by **CA, Steube (CO-INTRODUCERS) Bradley**; (Similar to CS/CS/H 00487) Local Business Taxes

921336	PCS	S		AP, AFT		04/14 01:35 PM

Tab 7	**SB 524** by **Steube (CO-INTRODUCERS) Simpson**; (Identical to H 00965) Sales and Use Tax on Investigation and Detective Services

Tab 8	**CS/SB 732** by **HP, Steube (CO-INTRODUCERS) Artiles**; (Similar to CS/CS/H 01307) Physician Assistant Workforce Surveys

Tab 9	**SB 360** by **Stargel (CO-INTRODUCERS) Grimsley**; (Compare to CS/CS/H 00293) Middle School Study

362598	PCS	S	RCS	AP, AED		04/26 02:28 PM
940270	A	S	RCS	AP, Stargel	btw L.92 - 93:	04/26 02:28 PM

Tab 10	**SB 468** by **Stargel (CO-INTRODUCERS) Young**; (Similar to CS/H 00757) Voluntary Prekindergarten Education

114168	PCS	S		AP, AED		04/20 09:26 AM
421754	A	S		AP, Stargel	Delete L.41 - 96:	04/22 05:50 PM

Tab 11	**CS/SB 780** by **ED, Stargel**; (Similar to CS/H 00749) Adoption Benefits

Tab 12	**CS/SB 880** by **CA, Stargel**; (Similar to CS/CS/CS/1ST ENG/H 00479) Government Accountability

405834	A	S	RCS	AP, Stargel	Delete L.391 - 394:	04/26 03:14 PM
678562	A	S	RCS	AP, Stargel	btw L.617 - 618:	04/26 03:14 PM

Tab 13	**CS/SB 928** by **EP, Stargel (CO-INTRODUCERS) Mayfield**; (Similar to CS/CS/1ST ENG/H 00573) Water Protection and Sustainability

Tab 14	**SB 1320** by **Stargel**; (Compare to CS/H 01123) Tax Administration					
437538	PCS	S		AP, AFT		04/17 12:05 PM
106194	A	S		AP, Flores	btw L.713 - 714:	04/24 09:43 AM
Tab 15	**SB 1710** by **Stargel (CO-INTRODUCERS) Grimsley**; (Similar to CS/CS/H 07057) Education					
613868	PCS	S		AP, AED		04/19 06:29 PM
866412	A	S		AP, Stargel	btw L.60 - 61:	04/28 02:15 PM
753854	A	S		AP, Stargel	Delete L.64:	04/22 05:50 PM
733616	A	S	L	AP, Bean	Delete L.46 - 60:	04/28 04:12 PM
Tab 16	**CS/SB 28** by **JU, Simmons**; (Similar to CS/H 06501) Relief of J.D.S. by the Agency for Persons with Disabilities					
Tab 17	**CS/SB 844** by **CJ, Simmons (CO-INTRODUCERS) Baxley**; (Similar to CS/CS/CS/H 00107) Criminal Offenses Involving Tombs and Memorials					
528916	PCS	S	RCS	AP, ACJ		04/26 03:12 PM
Tab 18	**SB 892** by **Simmons**; Youthful Offenders					
Tab 19	**SB 894** by **Simmons**; (Similar to CS/H 01091) Arrest Warrants for State Prisoners					
Tab 20	**SB 1050** by **Simmons**; (Similar to H 00883) Memory Disorder Clinics					
Tab 21	**CS/SB 1458** by **ED, Simmons**; (Identical to H 06037) Blind Services Direct-support Organization					
Tab 22	**CS/SB 1552** by **ED, Simmons**; (Compare to H 05003) Florida Best and Brightest Teacher and Principal Scholar Award Program					
558178	PCS	S	RCS	AP, AED		04/26 03:33 PM
736668	A	S	RCS	AP, Montford	btw L.558 - 559:	04/26 03:33 PM
Tab 23	**CS/SB 766** by **CJ, Rodriguez (CO-INTRODUCERS) Young, Farmer**; (Identical to CS/CS/H 00343) Payment Card Offenses					
597786	PCS	S	RCS	AP, ACJ		04/25 07:12 PM
Tab 24	**CS/SB 1104** by **EP, Perry**; (Similar to CS/H 00335) Resource Recovery and Management					
445720	PCS	S	RCS	AP, AEN		04/26 03:29 PM
Tab 25	**CS/CS/SB 1372** by **CA, RI, Perry**; (Compare to CS/H 00227) Building-related Contracting					
586648	A	S		AP, Brandes	btw L.39 - 40:	04/23 11:02 PM
806082	A	S		AP, Perry	btw L.273 - 274:	04/24 08:52 AM
Tab 26	**SB 176** by **Passidomo (CO-INTRODUCERS) Hutson, Stewart, Garcia, Rodriguez, Benacquisto, Campbell, Hukill**; (Similar to H 00063) Sales and Use Tax Exemption for Feminine Hygiene Products					
Tab 27	**CS/SB 1144** by **HP, Montford**; (Similar to CS/H 01041) Laboratory Screening					
Tab 28	**SB 808** by **Mayfield**; (Similar to CS/H 00591) Maximum Class Size					

Tab 29	**CS/CS/SB 240** by **HP, BI, Lee (CO-INTRODUCERS) Mayfield**; (Similar to CS/H 00161) Direct Primary Care

183112	A	S	RCS	AP, Lee	Delete L.24 - 58:	04/26 02:25 PM

Tab 30	**CS/SB 1588** by **MS, Latvala (CO-INTRODUCERS) Hukill**; (Similar to CS/CS/H 01235) Military and Veteran Support

818190	A	S		AP, Latvala	Delete L.35 - 84:	04/24 08:34 AM
703804	AA	S		AP, Gibson	Delete L.11:	04/24 03:21 PM

Tab 31	**SB 1670** by **Latvala**; (Similar to CS/CS/H 07059) Juvenile Justice

370410	PCS	S	RCS	AP, ACJ		04/25 08:22 PM
631984	A	S	RCS	AP, Latvala	btw L.383 - 384:	04/25 08:22 PM

Tab 32	**CS/CS/SB 1672** by **CA, TR, Latvala (CO-INTRODUCERS) Galvano, Rouson, Young**; (Similar to CS/CS/H 01243) Tampa Bay Area Regional Transit Authority

Tab 33	**CS/SB 1070** by **EE, Hutson**; (Similar to CS/CS/1ST ENG/H 00707) Voter Registration List Maintenance

Tab 34	**SB 916** by **Grimsley (CO-INTRODUCERS) Stargel**; (Compare to 1ST ENG/H 07117) Statewide Medicaid Managed Care Program

188616	PCS	S	RCS	AP, AHS		04/27 06:26 PM
~~565904~~	A	S	WD	AP, Braynon	Delete L.153 - 165:	04/27 06:26 PM
~~424586~~	SA	S	WD	AP, Braynon	Delete L.162 - 165:	04/27 06:26 PM

Tab 35	**CS/SB 1018** by **EP, Grimsley (CO-INTRODUCERS) Galvano**; (Similar to CS/CS/CS/H 00753) Contaminated Site Cleanup

546818	PCS	S	RCS	AP, AEN		04/25 08:19 PM
671492	A	S	RCS	AP, Galvano	btw L.35 - 36:	04/25 08:19 PM

Tab 36	**SB 714** by **Garcia**; (Compare to CS/H 00899) Comprehensive Transitional Education Programs

897830	PCS	S	RCS	AP, AHS		04/26 02:38 PM

Tab 37	**CS/SB 922** by **BI, Garcia**; (Similar to CS/CS/1ST ENG/H 00911) Insurance Adjusters

598160	PCS	S	RCS	AP, AGG		04/26 03:22 PM
603728	PCS:D	S	RCS	AP, Garcia	Delete everything after	04/26 03:22 PM
~~662786~~	PCS:AA	S	WD	AP, Garcia	Delete L.340 - 397:	04/26 03:22 PM

Tab 38	**CS/CS/SB 1044** by **JU, CF, Garcia (CO-INTRODUCERS) Campbell**; (Compare to CS/CS/1ST ENG/H 00023) Child Welfare

126346	A	S	RCS	AP, Garcia	Delete L.1773 - 1829:	04/26 03:28 PM
414774	A	S	RCS	AP, Grimsley	btw L.2152 - 2153:	04/26 03:28 PM

Tab 39	**SB 1056** by **Garcia (CO-INTRODUCERS) Campbell**; (Identical to H 06021) Home Health Care Agency Licenses

Tab 40	**CS/SB 1318** by **CF, Garcia, Broxson**; (Identical to CS/H 01269) Child Protection

Tab 41	**CS/SB 1562** by **TR, Garcia**; (Similar to CS/1ST ENG/H 01049) Expressway Authorities

424970	PCS	S	RCS	AP, ATD		04/26 03:36 PM
972232	PCS:D	S	RCS	AP, Brandes, Garcia	Delete everything after	04/26 03:36 PM

Tab 42	**SB 1564** by **Garcia**; (Identical to H 01385) Domestic Violence

Tab 43	**CS/SB 1468** by **ED, Galvano**; (Compare to H 01365) Education

755156	A	S	RCS	AP, Galvano	btw L.48 - 49:	04/26 03:34 PM
416750	A	S	RCS	AP, Galvano	btw L.61 - 62:	04/26 03:34 PM

Tab 44	**CS/SB 784** by **TR, Gainer (CO-INTRODUCERS) Rouson**; (Compare to CS/CS/CS/1ST ENG/H 00545) Department of Highway Safety and Motor Vehicles

314566	PCS	S		AP, ATD		04/20 04:30 PM
265394	A	S		AP, Simmons	btw L.287 - 288:	04/24 03:04 PM
743126	A	S		AP, Brandes	Delete L.421 - 425:	04/24 03:20 PM
838110	A	S		AP, Brandes	btw L.555 - 556:	04/25 08:31 AM
319724	SA	S		AP, Brandes	btw L.555 - 556:	04/28 02:16 PM
670990	A	S		AP, Brandes	btw L.1080 - 1081:	04/23 10:58 PM
254818	A	S		AP, Braynon	Delete L.1081 - 1234:	04/21 05:03 PM
213662	SA	S		AP, Braynon	btw L.2069 - 2070:	04/25 08:33 AM
934212	A	S		AP, Bean	Delete L.1081 - 1103:	04/24 08:36 AM
652328	SA	S		AP, Bean	Delete L.1081 - 1103:	04/24 04:20 PM
403134	A	S		AP, Gainer	Delete L.1081 - 1103:	04/24 06:26 PM
407566	A	S		AP, Brandes	btw L.1234 - 1235:	04/24 04:14 PM
349606	A	S		AP, Gainer	btw L.1727 - 1728:	04/25 09:33 AM
292206	A	S		AP, Book	btw L.1925 - 1926:	04/23 10:56 PM

Tab 45	**CS/SB 1118** by **TR, Gainer (CO-INTRODUCERS) Rouson**; (Similar to CS/CS/CS/1ST ENG/H 00865) Transportation

304644	PCS	S		AP, ATD		04/17 04:59 PM
890844	A	S		AP, Brandes	btw L.134 - 135:	04/23 11:01 PM
408222	A	S		AP, Simmons	btw L.134 - 135:	04/24 05:39 PM
~~463056~~	A	S	WD	AP, Brandes	Delete L.135 - 734:	04/28 01:37 PM
~~536292~~	AA	S	WD	AP, Brandes	btw L.296 - 297:	04/28 01:38 PM
870828	A	S		AP, Grimsley	btw L.389 - 390:	04/24 03:18 PM
~~404224~~	A	S	WD	AP, Gainer	Delete L.402 - 403:	04/24 11:07 AM
~~268346~~	A	S	WD	AP, Montford	btw L.734 - 735:	04/24 06:13 PM
788242	A	S		AP, Gainer	btw L.740 - 741:	04/24 11:07 AM
754266	A	S		AP, Braynon	btw L.740 - 741:	04/28 03:06 PM

Tab 46	**SB 814** by **Broxson**; (Similar to CS/H 00307) Florida Life and Health Insurance Guaranty Association

714754	A	S	RCS	AP, Broxson	Delete L.54 - 67:	04/26 03:08 PM

Tab 47	**CS/SB 48** by **JU, Braynon**; (Similar to CS/CS/H 06515) Relief of Wendy Smith and Dennis Darling, Sr./Florida State University

Tab 48	**CS/SB 590** by **JU, Brandes (CO-INTRODUCERS) Stargel, Gibson**; (Similar to CS/CS/CS/H 01337) Child Support and Parenting Time Plans

765792	PCS	S	RCS	AP		04/26 02:36 PM
464850	A	S	RCS	AP, Brandes	btw L.582 - 583:	04/26 02:36 PM

Tab 49	**CS/SB 406** by **HP, Bradley (CO-INTRODUCERS) Young, Hutson**; (Compare to H 01177) Compassionate Use of Low-THC Cannabis and Marijuana

832708	PCS	S	RCS	AP, AHS		04/27 06:26 PM
225574	A	S	RCS	AP, Bradley	btw L.311 - 312:	04/27 06:26 PM
427570	A	S	RCS	AP, Bradley	Delete L.330 - 339:	04/27 06:26 PM
974884	A	S	RCS	AP, Bradley	Delete L.585 - 610:	04/27 06:26 PM
~~338004~~	~~A~~	S	WD	AP, Bracy	Delete L.653:	04/27 06:26 PM
368518	A	S	RCS	AP, Braynon	Delete L.661 - 714:	04/27 06:26 PM
~~427690~~	~~A~~	S	WD	AP, Brandes	btw L.928 - 929:	04/27 06:26 PM
900914	A	S	RCS	AP, Bradley	Delete L.1029 - 1034:	04/27 06:26 PM
877586	A	S	RCS	AP, Bradley	btw L.1289 - 1290:	04/27 06:26 PM

Tab 50	**CS/SB 494** by **JU, Bradley**; (Compare to CS/H 00393) Compensation of Victims of Wrongful Incarceration

Tab 51	**CS/SB 1844** by **GO, Bradley**; (Compare to CS/H 07095) Public Records/Compassionate Use Registry

Tab 52	**CS/SB 668** by **ED, Bean (CO-INTRODUCERS) Bradley**; (Similar to CS/CS/H 00859) Postsecondary Distance Education

Tab 53	**CS/SB 796** by **ED, Bean**; (Compare to H 05103) Charter Schools

406464	D	S	RCS	AP, Bean	Delete everything after	04/25 03:59 PM
740332	AA	S	RCS	AP, Montford	Delete L.68 - 145:	04/25 03:59 PM
821780	AA	S	RCS	AP, Montford	Delete L.315:	04/25 03:59 PM

Tab 54	**CS/SB 684** by **CJ, Baxley**; (Similar to CS/CS/H 00699) Internet Identifiers

Tab 55	**CS/SB 686** by **CJ, Baxley**; (Similar to CS/H 00701) Public Records/Internet Identifiers

Tab 56	**CS/CS/SB 764** by **CA, GO, Baxley**; (Similar to CS/CS/H 00455) Ad Valorem Taxation

929072	PCS	S	RCS	AP, AFT		04/26 02:41 PM
135936	A	S	RCS	AP, Baxley	Delete L.52 - 171:	04/26 02:41 PM

Tab 57	**CS/CS/SB 776** by **CU, CJ, Baxley**; (Identical to CS/H 00879) Unlawful Acquisition of Utility Services

Tab 58	**CS/SB 842** by **TR, Galvano**; (Similar to CS/CS/CS/H 00695) South Florida Regional Transportation Authority

326920	PCS	S	RCS	AP, ATD		04/26 03:10 PM
859032	A	S	RCS	AP, Galvano	Delete L.94 - 220:	04/26 03:10 PM

Tab 59	**CS/SB 1310** by **GO, Mayfield**; (Identical to CS/H 01141) State Employment

Tab 60	**CS/SB 38** by **JU, Benacquisto**; (Similar to CS/CS/H 06511) Relief of L.T. by the State of Florida

Tab 61	**CS/SB 50** by **JU, Gibson (CO-INTRODUCERS) Bracy**; (Similar to CS/H 06539) Relief of Eddie Weekley and Charlotte Williams by the Agency for Persons with Disabilities

Tab 62	**CS/SB 1012** by **BI, Brandes (CO-INTRODUCERS) Young**; (Similar to CS/CS/CS/H 01007) Insurer Anti-fraud Efforts					
167518	A	S	RCS	AP, Brandes	Delete L.41 - 308:	04/26 03:25 PM
311138	AA	S	RCS	AP, Brandes	Delete L.101:	04/26 03:25 PM
589252	AA	S	RCS	AP, Brandes	btw L.566 - 567:	04/26 03:25 PM
~~364756~~	A	S	WD	AP, Brandes	Delete L.220 - 221:	04/24 09:08 AM

Tab 63	**CS/SB 1014** by **BI, Brandes**; (Similar to CS/H 01009) Public Records/Investigation and Tracking of Insurance Fraud/Department of Financial Services

Tab 64	**CS/SB 1312** by **CA, Perry**; (Similar to CS/CS/H 01021) Construction					
728698	A	S		AP, Perry	btw L.172 - 173:	04/24 08:53 AM
692516	SA	S		AP, Perry	Delete L.151 - 657:	04/24 05:36 PM
~~137454~~	A	S	WD	AP, Brandes	Delete L.513 - 542:	04/25 08:27 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Latvala, Chair
Senator Flores, Vice Chair

MEETING DATE: Tuesday, April 25, 2017
TIME: 9:00 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/CS/SB 498** Judiciary / Commerce and Tourism / Young (Similar CS/CS/H 467, Compare H 1161, CS/S 1452)	Department of Agriculture and Consumer Services; Specifying that applications for funding for certain agriculture education and promotion facilities must be postmarked or electronically submitted by a certain date; revising the standards for when an applicant is eligible to take the licensure examination to practice as a surveyor and mapper; repealing provisions relating to maximum permit fees for taximeters; revising the requirements to obtain a license to carry a concealed weapon or firearm, etc. CM 03/06/2017 Fav/CS JU 03/22/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 14 Nays 4
2	**CS/SB 512** Regulated Industries / Young (Identical H 113, CS/H 743)	Steroid Use in Racing Greyhounds; Providing that a positive test result for anabolic steroids in certain samples taken from a greyhound violates the prohibition on the racing of animals that are impermissibly medicated or determined to have a prohibited substance present, etc. RI 04/06/2017 Fav/CS RC 04/19/2017 Favorable AP 04/25/2017 Not Considered	Not Considered

A proposed committee substitute for the following bill (CS/SB 876) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 876** Health Policy / Young (Similar CS/CS/H 229, Compare CS/H 7011)	Programs for Impaired Health Care Practitioners; Revising provisions related to impaired practitioner programs; deleting a requirement authorizing the department to adopt by rule the manner in which consultants work with the department in intervention, in evaluating and treating professionals, in providing and monitoring continued care of impaired professionals, and in expelling professionals from the program; providing that, under certain circumstances, a board or, if there is no board, the department, is not required to refuse to admit certain candidates to an examination, to issue a license, certificate, or registration to certain applicants, or to renew a license, certificate, or registration of certain applicants if they have successfully completed a pretrial diversion program, etc. HP 03/14/2017 Fav/CS AHS 04/18/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation – Health and Human Services

A proposed committee substitute for the following bill (SB 1398) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1398** Stewart (Similar CS/CS/CS/H 727)	Accessibility of Places of Public Accommodation; Requiring the Department of Business and Professional Regulation to establish a program to provide for the certification of certain experts; authorizing such experts to advise and provide certain inspections for places of public accommodation relating to the Americans with Disabilities Act; authorizing an owner of a place of public accommodation to request a facility to be inspected for specified purposes; specifying that such certificate is valid for 3 years, etc. RI 04/06/2017 Favorable AGG 04/18/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation – General Government

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**CS/CS/SB 150** Judiciary / Criminal Justice / Steube (Similar CS/H 477, Compare CS/H 505, CS/H 641, CS/S 290, CS/S 1002)	Controlled Substances; Providing that certain emergency responders and crime laboratory personnel may possess, store, and administer emergency opioid antagonists; adding certain synthetic opioid substitute compounds to the list of Schedule I controlled substances; revising the substances that constitute the offenses of trafficking and capital trafficking in, and capital importation of, hydrocodone and oxycodone; revising the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified, etc. CJ 04/03/2017 Fav/CS JU 04/19/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 14 Nays 2
	A proposed committee substitute for the following bill (CS/SB 330) is available:		
6	**CS/SB 330** Community Affairs / Steube (Similar CS/CS/H 487)	Local Business Taxes; Providing an exemption from the business tax, subject to certain conditions, to specified veterans, spouses of veterans and active servicemembers, and low-income individuals; repealing provisions relating to exemptions allowed disabled veterans of any war or their unremarried spouses, etc. CA 03/22/2017 Fav/CS AFT 04/13/2017 Fav/CS AP 04/25/2017 Not Considered With subcommittee recommendation – Finance and Tax	Not Considered
7	**SB 524** Steube (Identical H 965)	Sales and Use Tax on Investigation and Detective Services; Providing that fingerprint services required for a license to carry a concealed weapon or firearm are not subject to the tax, etc. AFT 03/21/2017 Favorable AP 04/25/2017 Favorable With subcommittee recommendation – Finance and Tax	Favorable Yeas 15 Nays 1
8	**CS/SB 732** Health Policy / Steube (Similar CS/CS/H 1307)	Physician Assistant Workforce Surveys; Requiring that a physician assistant license renewal include the submission of a physician assistant workforce survey; requiring the Department of Health to report the data collected from such surveys to the boards, etc. HP 04/03/2017 Fav/CS AHS 04/18/2017 Favorable AP 04/25/2017 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – Health and Human Services		
	A proposed committee substitute for the following bill (SB 360) is available:		
9	**SB 360** Stargel (Compare CS/CS/H 293)	Middle School Study; Requiring the Department of Education to conduct a comprehensive study of states with nationally recognized high-performing middle schools in reading and mathematics, etc. ED 03/06/2017 Favorable AED 04/13/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 14 Nays 0
	With subcommittee recommendation – Pre-K – 12 Education		
	A proposed committee substitute for the following bill (SB 468) is available:		
10	**SB 468** Stargel (Similar CS/H 757)	Voluntary Prekindergarten Education; Requiring the Just Read, Florida! Office to provide teachers, reading coaches, and principals in prekindergarten through grade 3 with specified training; requiring voluntary prekindergarten providers to provide parents with pre- and post- assessment results within a specified timeframe, etc. ED 04/03/2017 Favorable AED 04/18/2017 Fav/CS AP 04/25/2017 Not Considered RC	Not Considered
	With subcommittee recommendation – Pre-K – 12 Education		
11	**CS/SB 780** Education / Stargel (Similar CS/H 749)	Adoption Benefits; Revising the definition of the term "qualifying adoptive employee" to include persons employed by charter schools and the Florida Virtual School for the purpose of extending adoption benefits to those employees; authorizing such employees of charter schools and the Florida Virtual School to apply retroactively for the adoption benefit in certain circumstances, etc. ED 03/21/2017 Fav/CS AHS 04/18/2017 Favorable AP 04/25/2017 Favorable	Favorable Yeas 16 Nays 0
	With subcommittee recommendation – Health and Human Services		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**CS/SB 880** Community Affairs / Stargel (Similar CS/CS/CS/H 479, Compare CS/CS/H 1137, CS/S 1668)	Government Accountability; Specifying that the Governor, the Commissioner of Education, or the designee of the Governor or of the commissioner may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements; revising reporting requirements applicable to the Florida Clerks of Court Operations Corporation; revising certain lodging rates for the purpose of reimbursement to specified employees; requiring counties and municipalities to maintain certain budget documents on the entities' websites for a specified period, etc. CA 03/14/2017 Fav/CS AP 04/25/2017 Fav/CS RC	Fav/CS Yeas 16 Nays 0
13	**CS/SB 928** Environmental Preservation and Conservation / Stargel (Similar CS/CS/H 573)	Water Protection and Sustainability; Creating the "Heartland Headwaters Protection and Sustainability Act"; requiring the Polk Regional Water Cooperative, in coordination with its member county and municipal governments, to prepare a comprehensive annual report on certain water resource projects within its members' jurisdictions; authorizing local government infrastructure surtax proceeds to be allocated to regional water supply authorities under certain conditions, etc. EP 03/28/2017 Fav/CS AEN 04/13/2017 Favorable AP 04/25/2017 Favorable	Favorable Yeas 17 Nays 0

With subcommittee recommendation – Environment and Natural Resources

A proposed committee substitute for the following bill (SB 1320) is available:

14	**SB 1320** Stargel (Compare CS/H 1123, H 7109, CS/S 1442)	Tax Administration; Deleting a requirement for circuit judges to monthly report certain information to the Department of Revenue relating to the estates of certain decedents; deleting requirements to pay license taxes for a terminal supplier license, an importer, exporter, or blender of motor fuels license, or a wholesaler of motor fuel license; deleting a requirement for the department to deduct a specified fee from certain motor fuel refund claims, etc. JU 03/22/2017 Favorable AFT 04/13/2017 Fav/CS AP 04/25/2017 Not Considered	Not Considered

With subcommittee recommendation – Finance and Tax

A proposed committee substitute for the following bill (SB 1710) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**SB 1710** Stargel (Similar CS/CS/H 7057)	Education; Designating the month of September as "American Founders' Month"; revising the duties of the Just Read, Florida! Office to include developing and providing access to certain resources for elementary schools; requiring postsecondary students to demonstrate civic literacy, etc. ED 04/03/2017 Favorable AED 04/13/2017 Fav/CS AP 04/25/2017 Not Considered RC With subcommittee recommendation – Pre-K – 12 Education	Not Considered
16	**CS/SB 28** Judiciary / Simmons (Similar CS/H 6501)	Relief of J.D.S. by the Agency for Persons with Disabilities; Providing for the relief of J.D.S.; providing an appropriation from the General Revenue Fund to compensate J.D.S. for injuries and damages sustained as a result of the negligence of the Agency for Persons with Disabilities, as successor agency of the Department of Children and Family Services; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act, etc. SM JU 02/21/2017 Fav/CS AHS 04/18/2017 Favorable AP 04/25/2017 Favorable With subcommittee recommendation – Health and Human Services	Favorable Yeas 16 Nays 0
	A proposed committee substitute for the following bill (CS/SB 844) is available:		
17	**CS/SB 844** Criminal Justice / Simmons (Similar CS/CS/CS/H 107)	Criminal Offenses Involving Tombs and Memorials; Providing that a person who willfully and knowingly excavates, exposes, moves, or removes the contents of a grave or tomb commits a felony; authorizing an owner, officer, employee, or agent of specified cemeteries to relocate the contents of a grave or tomb, subject to certain conditions, etc. CJ 03/13/2017 Fav/CS ACJ 04/13/2017 Fav/CS AP 04/25/2017 Fav/CS With subcommittee recommendation – Criminal and Civil Justice	Fav/CS Yeas 15 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**SB 892** Simmons	Youthful Offenders; Revising the criteria allowing a court to sentence as a youthful offender a person who is found guilty of, or who pled nolo contendere or guilty to, committing a felony before the person turned 21 years of age, etc. CJ 03/13/2017 Favorable ACJ 03/22/2017 Favorable AP 04/25/2017 Favorable With subcommittee recommendation – Criminal and Civil Justice	Favorable Yeas 15 Nays 0
19	**SB 894** Simmons (Similar CS/H 1091)	Arrest Warrants for State Prisoners; Authorizing a prisoner in a state prison who has an unserved violation of probation or an unserved violation of community control warrant to file a notice of unserved warrant in the circuit court where the warrant was issued; requiring the court to send the order to the county sheriff, etc. CJ 03/13/2017 Favorable JU 03/22/2017 Favorable AP 04/25/2017 Favorable	Favorable Yeas 18 Nays 0
20	**SB 1050** Simmons (Similar H 883)	Memory Disorder Clinics; Establishing a memory disorder clinic at Florida Hospital in Orange County, etc. HP 03/14/2017 Favorable AHS 04/13/2017 Not Considered AHS 04/18/2017 Favorable AP 04/25/2017 Favorable With subcommittee recommendation – Health and Human Services	Favorable Yeas 16 Nays 0
21	**CS/SB 1458** Education / Simmons (Identical H 6037)	Blind Services Direct-support Organization; Abrogating the scheduled repeal of provisions relating to the blind services direct-support organization, etc. ED 03/21/2017 Fav/CS AHE 04/13/2017 Favorable AP 04/25/2017 Favorable With subcommittee recommendation – Higher Education	Favorable Yeas 18 Nays 0

A proposed committee substitute for the following bill (CS/SB 1552) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**CS/SB 1552** Education / Simmons (Compare H 5003, CS/H 7069, S 1410)	Florida Best and Brightest Teacher and Principal Scholar Award Program; Creating the Florida Best and Brightest Teacher and Principal Scholar Award Program to be administered by the Department of Education; providing timelines and requirements for program implementation; requiring the State Board of Education to adopt rules, etc. ED 04/03/2017 Fav/CS AED 04/18/2017 Fav/CS AP 04/25/2017 Fav/CS RC	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation – Pre-K – 12 Education

A proposed committee substitute for the following bill (CS/SB 766) is available:

23	**CS/SB 766** Criminal Justice / Rodriguez (Identical CS/CS/H 343)	Payment Card Offenses; Revising the offenses of using a scanning device or reencoder with the intent to defraud; prohibiting the use of a skimming device with intent to defraud; prohibiting the possession, sale, or delivery of a skimming device, etc. CJ 04/03/2017 Fav/CS ACJ 04/18/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 17 Nays 0

With subcommittee recommendation – Criminal and Civil Justice

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A proposed committee substitute for the following bill (CS/SB 1104) is available:

24	**CS/SB 1104** Environmental Preservation and Conservation / Perry (Similar CS/H 335)	Resource Recovery and Management; Providing that certain pyrolysis facilities are exempt from certain resource recovery regulations; authorizing recovered materials dealers to use pyrolysis facilities for recovered materials processing, etc. EP 03/28/2017 Fav/CS AEN 04/13/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 17 Nays 0

With subcommittee recommendation – Environment and Natural Resources

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	**CS/CS/SB 1372** Community Affairs / Regulated Industries / Perry (Compare CS/H 227, H 691, CS/H 901, CS/CS/S 860, S 7000)	Building-related Contracting; Specifying that provisions regulating certified electrical contractors and certified alarm system contractors do not prevent such contractors from acting as a prime contractor or from subcontracting work to other licensed contractors under certain circumstances; requiring the Florida Building Commission to use certain entities and codes for updates to the Florida Building Code; providing that certain technical amendments to the Florida Building Code which are adopted by a local government are not rendered void when the code is updated, etc. RI 04/04/2017 Fav/CS CA 04/17/2017 Fav/CS AP 04/25/2017 Not Considered RC	Not Considered
26	**SB 176** Passidomo (Similar H 63, Compare H 7109)	Sales and Use Tax Exemption for Feminine Hygiene Products; Exempting the sale of feminine hygiene products from the sales and use tax, etc. CM 01/23/2017 Favorable AFT 02/22/2017 Favorable AP 04/25/2017 Favorable With subcommittee recommendation – Finance and Tax	Favorable Yeas 18 Nays 0
27	**CS/SB 1144** Health Policy / Montford (Similar CS/H 1041, Compare S 1074)	Laboratory Screening; Clarifying that certain requirements related to the reporting of positive HIV test results to county health departments apply only to testing performed in a nonhealth care setting; revising requirements of a public information initiative on lead-based-paint hazards; revising requirements on the distribution of information on childhood lead poisoning developed by the State Surgeon General or his or her designee; clarifying that the membership of the Genetics and Newborn Screening Advisory Council must include one member each from four of the medical schools in this state, etc. HP 03/27/2017 Fav/CS AHS 04/18/2017 Favorable AP 04/25/2017 Favorable With subcommittee recommendation – Health and Human Services	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
28	**SB 808** Mayfield (Similar CS/H 591)	Maximum Class Size; Revising requirements for charter school compliance with maximum class size requirements; calculating a school district's class size categorical allocation reduction at the school average when maximum class size requirements are not met; revising requirements for compliance with maximum class size requirements for a school participating in the Principal Autonomy Pilot Project Program, etc. ED 03/21/2017 Favorable AED 04/18/2017 Favorable AP 04/25/2017 Not Considered RC	Not Considered
	With subcommittee recommendation – Pre-K – 12 Education		
29	**CS/CS/SB 240** Health Policy / Banking and Insurance / Lee (Similar CS/H 161)	Direct Primary Care; Requiring the Agency for Health Care Administration to provide specified financial assistance to certain Medicaid recipients; authorizing primary care providers or their agents to enter into direct primary care agreements for providing primary care services; providing construction and applicability of the Florida Insurance Code as to direct primary care agreements, etc. BI 02/07/2017 Fav/CS HP 02/21/2017 Fav/CS AHS 03/21/2017 Favorable AP 04/25/2017 Fav/CS	Fav/CS Yeas 15 Nays 0
	With subcommittee recommendation – Health and Human Services		
30	**CS/SB 1588** Military and Veterans Affairs, Space, and Domestic Security / Latvala (Similar CS/CS/H 1235, Compare S 1594)	Military and Veteran Support; Requiring landlords, condominium associations, cooperative associations, and homeowners' associations that require a servicemember's spouse or certain adult dependents to submit a rental application to complete the processing of the application of within a specified timeframe; requiring the Department of Veterans' Affairs to create a website to streamline the procedure for businesses applying for certification as a veteran business enterprise; authorizing the Supreme Court to admit on motion a bar applicant who is the spouse of a servicemember stationed in this state under certain circumstances, etc. MS 03/22/2017 Fav/CS JU 03/28/2017 Favorable AP 04/25/2017 Not Considered	Not Considered

A proposed committee substitute for the following bill (SB 1670) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
31	**SB 1670** Latvala (Similar CS/CS/H 7059)	Juvenile Justice; Revising requirements for placement of a child in detention care; providing that a child who is designated a prolific juvenile offender does not require a risk assessment to be placed in detention care; providing that a child meeting specified criteria shall be placed in secure detention care until the child's detention hearing, etc. CJ 03/27/2017 Favorable ACJ 04/13/2017 Fav/CS AP 04/25/2017 Fav/CS With subcommittee recommendation – Criminal and Civil Justice	Fav/CS Yeas 17 Nays 0
32	**CS/CS/SB 1672** Community Affairs / Transportation / Latvala (Similar CS/CS/H 1243)	Tampa Bay Area Regional Transit Authority; Creating the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee to replace the Tampa Bay Area Regional Transportation Authority Metropolitan Planning Organization Chairs Coordinating Committee; revising the definition of the term "authority" to mean the Tampa Bay Area Regional Transit Authority and to include only Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties and any other contiguous county that is party to an agreement of participation; creating the Tampa Bay Area Regional Transit Authority to replace the Tampa Bay Area Regional Transportation Authority, etc. TR 03/22/2017 Fav/CS CA 04/17/2017 Fav/CS AP 04/25/2017 Favorable	Favorable Yeas 17 Nays 0
33	**CS/SB 1070** Ethics and Elections / Hutson (Similar CS/CS/H 707, Compare CS/CS/H 709, Linked CS/CS/S 1072)	Voter Registration List Maintenance ; Authorizing the Department of State to enter into certain interstate agreements or become a member of a nongovernmental entity to verify voter registration information; requiring the department to share certain information with supervisors of elections, etc. EE 04/04/2017 Fav/CS AP 04/25/2017 Favorable RC	Favorable Yeas 18 Nays 0

A proposed committee substitute for the following bill (SB 916) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
34	**SB 916** Grimsley (Compare H 7117, CS/CS/S 682)	Statewide Medicaid Managed Care Program; Deleting the fee-for-service option as a basis for the reimbursement of Medicaid provider service networks; requiring provider service networks to be prepaid plans; revising the number of eligible Medicaid health care plans the agency must procure for certain regions in the state, etc. HP 03/27/2017 Favorable AHS 04/13/2017 Fav/CS AP 04/25/2017 Fav/CS RC	Fav/CS Yeas 17 Nays 0

With subcommittee recommendation – Health and Human Services

A proposed committee substitute for the following bill (CS/SB 1018) is available:

35	**CS/SB 1018** Environmental Preservation and Conservation / Grimsley (Similar CS/CS/CS/H 753)	Contaminated Site Cleanup; Providing an exception to a requirement that an applicant for advanced cleanup demonstrate an ability to pay cost share; requiring that the Department of Environmental Protection determine whether specified requirements are acceptable under certain circumstances; authorizing site assessments in advance of site priority ranking under certain circumstances, etc. EP 03/14/2017 Fav/CS AEN 04/13/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 16 Nays 0

With subcommittee recommendation – Environment and Natural Resources

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A proposed committee substitute for the following bill (SB 714) is available:

36	**SB 714** Garcia (Compare CS/H 899)	Comprehensive Transitional Education Programs; Authorizing the Agency for Persons with Disabilities to petition a court for the appointment of a receiver for a comprehensive transitional education program under certain circumstances; providing that no new comprehensive transitional education programs may be licensed after a specified date, etc. CF 03/06/2017 Favorable AHS 04/13/2017 Not Considered AHS 04/18/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 16 Nays 0

With subcommittee recommendation – Health and Human Services

A proposed committee substitute for the following bill (CS/SB 922) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
37	**CS/SB 922** Banking and Insurance / Garcia (Similar CS/CS/H 911, Compare CS/CS/H 925, CS/CS/S 986)	Insurance Adjusters; Revising applicability of the Licensing Procedures Law to include adjusting firms; prohibiting certain entities from acting as insurance adjusting firms without specified licenses; specifying that an unlicensed firm is subject to a certain administrative penalty; providing construction relating to certain limitations on insurance claim payments and public adjuster compensation, etc. BI 04/03/2017 Fav/CS AGG 04/18/2017 Fav/CS AP 04/25/2017 Fav/CS With subcommittee recommendation – General Government	Fav/CS Yeas 17 Nays 0
38	**CS/CS/SB 1044** Judiciary / Children, Families, and Elder Affairs / Garcia (Compare CS/CS/H 23, CS/CS/H 1121, CS/H 7075, CS/CS/S 570, S 1400)	Child Welfare; Providing that central abuse hotline information may be used for employment screening of residential group home caregivers; providing that confidential records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, may be accessed for employment screening of residential group home caregivers; requiring a court to consider maltreatment allegations against a parent in an evidentiary hearing relating to a dependency petition; establishing a shared family care residential services pilot program for substance-exposed newborns, etc. CF 03/13/2017 Fav/CS JU 04/19/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 17 Nays 0
39	**SB 1056** Garcia (Identical H 6021)	Home Health Care Agency Licenses; Removing a prohibition against the issuance of an initial home health agency license to an applicant who shares common controlling interests with another licensed home health agency located within 10 miles of the applicant and in the same county, etc. HP 04/03/2017 Favorable AHS 04/13/2017 Not Considered AHS 04/18/2017 Favorable AP 04/25/2017 Favorable With subcommittee recommendation – Health and Human Services	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
40	**CS/SB's 1318 & 1454** Children, Families, and Elder Affairs / Garcia / Broxson (Identical CS/H 1269)	Child Protection; (THIS BILL COMBINES S1318 & 1454) Revising the entities responsible for screening, employing, and terminating child protection team medical directors to include the Statewide Medical Director for Child Protection; requiring the Department of Health, in consultation with the Department of Children and Families, to adopt rules regarding sexual abuse treatment programs; revising provisions regarding expert testimony provided by certain entities to include criminal cases involving child abuse and neglect, dependency cases, and cases involving sexual abuse of a child, etc. CF 03/27/2017 Fav/CS Combined - Lead AHS 04/18/2017 Favorable AP 04/25/2017 Favorable	Favorable Yeas 16 Nays 0

With subcommittee recommendation – Health and Human Services

A proposed committee substitute for the following bill (CS/SB 1562) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
41	**CS/SB 1562** Transportation / Garcia (Similar CS/H 1049, Compare CS/CS/H 961)	Expressway Authorities; Citing this act as the "Toll Reform Act"; requiring toll increases by authorities in certain counties to be justified by an independent study by a third party; providing that such authorities may only increase tolls to the extent necessary to adjust for inflation pursuant to a certain procedure for toll rate adjustments; requiring authorities in certain counties to reduce toll charges by a specified amount at the time that any toll is incurred for certain SunPass registrants, etc. TR 03/22/2017 Fav/CS ATD 04/18/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 18 Nays 0

With subcommittee recommendation – Transportation, Tourism, and Economic Development

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
42	**SB 1564** Garcia (Identical H 1385)	Domestic Violence; Specifying that a person must complete a batterers' intervention program ordered as a condition of probation in certain circumstances; increasing the minimum terms of imprisonment for domestic violence; prohibiting the award of attorney fees in specified domestic violence proceedings, etc. CJ 04/03/2017 Favorable ACJ 04/18/2017 Favorable AP 04/25/2017 Favorable	Favorable Yeas 17 Nays 0

With subcommittee recommendation – Criminal and Civil Justice

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
43	**CS/SB 1468** Education / Galvano (Compare H 1365, H 5003, S 824, S 2502, S 2516)	Education; Requiring the Auditor General to conduct annual audits of the Florida School for the Deaf and the Blind; creating the Early Childhood Music Education Incentive Pilot Program within the Department of Education for a specified period, etc. ED 04/03/2017 Fav/CS AED 04/18/2017 Favorable AP 04/25/2017 Fav/CS	Fav/CS Yeas 16 Nays 0

With subcommittee recommendation – Pre-K – 12 Education

A proposed committee substitute for the following bill (CS/SB 784) is available:

44	**CS/SB 784** Transportation / Gainer (Compare CS/CS/CS/H 545, CS/CS/CS/H 1375, CS/S 1022, CS/S 1374, CS/S 1734)	Department of Highway Safety and Motor Vehicles; Revising provisions relating to federal regulations to which owners and drivers of commercial motor vehicles are subject; providing an exemption, beginning on a specified date, of a certain fee for vehicles registered under the International Registration Plan; providing for reimbursement to the department of tuition and other course expenses for certain training under certain circumstances; requiring the department to make available, upon request, a report to each school district of certain information of each student whose driving privileges have been suspended under this section, etc. TR 03/22/2017 Fav/CS ATD 04/18/2017 Fav/CS AP 04/25/2017 Not Considered	Not Considered

With subcommittee recommendation – Transportation, Tourism, and Economic Development

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A proposed committee substitute for the following bill (CS/SB 1118) is available:

45	**CS/SB 1118** Transportation / Gainer (Similar CS/CS/CS/H 865, Compare CS/CS/CS/H 695)	Transportation; Providing for the calculation of fines for unlawful weight and load for a vehicle fueled by natural gas; requiring bridges on public transportation facilities to be inspected for certain purposes at regular intervals as required by the Federal Highway Administration; increasing the allowable amount for contracts for construction and maintenance which the Department of Transportation may enter into, in certain circumstances, without advertising and receiving competitive bids, etc. TR 03/28/2017 Fav/CS ATD 04/13/2017 Fav/CS AP 04/25/2017 Not Considered	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
46	**SB 814** Broxson (Similar CS/H 307)	Florida Life and Health Insurance Guaranty Association; Revising applicability of the Florida Life and Health Insurance Guaranty Association Act as to specified annuity contracts; specifying the association's maximum liability as to certain health insurance policies, etc. BI 03/14/2017 Favorable AGG 04/13/2017 Favorable AP 04/25/2017 Fav/CS	Fav/CS Yeas 18 Nays 0
	With subcommittee recommendation – General Government		
47	**CS/SB 48** Judiciary / Braynon (Similar CS/CS/H 6515)	Relief of Wendy Smith and Dennis Darling, Sr./Florida State University; Providing for the relief of Wendy Smith and Dennis Darling, Sr., parents of Devaughn Darling, deceased; providing an appropriation to compensate the parents for the loss of their son, Devaughn Darling, whose death occurred while he was engaged in football preseason training on the Florida State University campus, etc. SM JU 02/21/2017 Fav/CS AHE 04/18/2017 Favorable AP 04/25/2017 Favorable	Favorable Yeas 14 Nays 1
	With subcommittee recommendation – Higher Education		
	A proposed committee substitute for the following bill (CS/SB 590) is available:		
48	**CS/SB 590** Judiciary / Brandes (Similar CS/CS/CS/H 1337)	Child Support and Parenting Time Plans; Authorizing the Department of Revenue to establish parenting time plans agreed to by both parents in Title IV-D child support actions; providing the purpose and requirements for Title IV-D Standard Parenting Time Plans; requiring the department to refer parents who do not agree on a parenting time plan to a circuit court; authorizing the department to incorporate either an agreed-upon parenting time plan or a Title IV-D Standard Parenting Time Plan in a child support order, etc. CF 03/06/2017 Favorable JU 03/28/2017 Fav/CS AGG 04/13/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	With subcommittee recommendation – General Government		
	A proposed committee substitute for the following bill (CS/SB 406) is available:		
49	**CS/SB 406** Health Policy / Bradley (Compare H 1177, CS/CS/H 1397, S 614, S 1388, S 1472, S 1666, S 1758, Linked CS/S 1844)	Compassionate Use of Low-THC Cannabis and Marijuana; Authorizing physicians to issue physician certifications to specified patients who meet certain conditions; requiring the Department of Health to register caregivers meeting certain requirements on the compassionate use registry; requiring the department to establish a quality control program that requires medical marijuana treatment centers to submit samples from each batch or lot of marijuana to an independent testing laboratory; creating the "Medical Marijuana Research and Education Act"; establishing the Coalition for Medical Marijuana Research and Education within the H. Lee Moffitt Cancer Center and Research Institute, Inc., etc. HP 04/03/2017 Fav/CS AHS 04/18/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 15 Nays 1
	With subcommittee recommendation – Health and Human Services		
50	**CS/SB 494** Judiciary / Bradley (Similar S 556, Compare CS/H 393)	Compensation of Victims of Wrongful Incarceration; Revising the circumstances under which a wrongfully incarcerated person is not eligible for compensation under the Victims of Wrongful Incarceration Compensation Act; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation, etc. CJ 02/21/2017 Favorable JU 03/07/2017 Fav/CS AP 04/25/2017 Favorable	Favorable Yeas 18 Nays 0
51	**CS/SB 1844** Governmental Oversight and Accountability / Bradley (Compare CS/H 7095, S 1388, S 1666, S 1758, Linked CS/S 406)	Public Records/Compassionate Use Registry; Providing an exemption from public records requirements for a qualifying patient's or caregiver's personal identifying information, all information contained on their compassionate use registry identification cards, and all information pertaining to a physician certification for marijuana; extending the date of future review and repeal of the exemption; providing a statement of public necessity, etc. GO 04/17/2017 Fav/CS AP 04/25/2017 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
52	**CS/SB 668** Education / Bean (Similar CS/CS/H 859)	Postsecondary Distance Education; Authorizing this state to participate in the State Authorization Reciprocity Agreement (SARA) for delivery of postsecondary distance education; providing definitions; establishing the Postsecondary Reciprocal Distance Education Coordinating Council within the Department of Education; authorizing the council to revoke a Florida SARA institution's participation for noncompliance, etc. ED 03/27/2017 Fav/CS AHE 04/13/2017 Favorable AP 04/25/2017 Favorable With subcommittee recommendation – Higher Education	Favorable Yeas 15 Nays 0
53	**CS/SB 796** Education / Bean (Compare H 5103)	Charter Schools; Revising charter school contract and funding requirements; authorizing certain entities to apply for designation as a High-Impact Charter Management Organization; requiring the Department of Education to give priority to certain charter schools applying for specified grants, etc. ED 03/27/2017 Workshop-Discussed ED 04/03/2017 Not Considered ED 04/17/2017 Fav/CS AP 04/25/2017 Fav/CS RC	Fav/CS Yeas 13 Nays 5
54	**CS/SB 684** Criminal Justice / Baxley (Similar CS/CS/H 699, Compare CS/H 701, Linked CS/S 686)	Internet Identifiers; Requiring a sexual predator to register each Internet identifier's corresponding website home page or application software name with the Department of Law Enforcement through the sheriff's office; requiring a sexual predator to report any change to certain information after initial in-person registration in a specified manner; providing that the department's sexual predator registration list is a public record, unless otherwise made exempt or confidential and exempt, etc. CJ 04/03/2017 Fav/CS ACJ 04/18/2017 Favorable AP 04/25/2017 Favorable With subcommittee recommendation – Criminal and Civil Justice	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
55	**CS/SB 686** Criminal Justice / Baxley (Similar CS/H 701, Compare CS/CS/H 699, Linked CS/S 684)	Public Records/Internet Identifiers; Requiring that electronic mail addresses and Internet identifiers of sexual predators or sexual offenders reported pursuant to specified laws be exempt from public records requirements; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. CJ 04/03/2017 Fav/CS GO 04/17/2017 Favorable AP 04/25/2017 Favorable	Favorable Yeas 18 Nays 0

A proposed committee substitute for the following bill (CS/CS/SB 764) is available:

56	**CS/CS/SB 764** Community Affairs / Governmental Oversight and Accountability / Baxley (Similar CS/CS/H 455)	Ad Valorem Taxation; Providing an exemption from ad valorem taxation for certain first responders under specified conditions; providing an exemption from ad valorem taxation for certain surviving spouses of first responders who have died; specifying the documentation required to receive the exemption, etc. GO 03/06/2017 Fav/CS CA 03/22/2017 Fav/CS AFT 04/13/2017 Fav/CS AP 04/25/2017 Fav/CS With subcommittee recommendation – Finance and Tax	Fav/CS Yeas 18 Nays 0
57	**CS/CS/SB 776** Communications, Energy, and Public Utilities / Criminal Justice / Baxley (Identical CS/H 879)	Unlawful Acquisition of Utility Services; Revising the elements that constitute theft of utilities; clarifying that the presence of certain devices and alterations on the property of, and the actual possession by, a person constitutes prima facie evidence of a violation; clarifying that specified circumstances create prima facie evidence of theft of utility services for the purpose of facilitating the manufacture of a controlled substance, etc. CJ 03/21/2017 Fav/CS CU 03/28/2017 Fav/CS ACJ 04/13/2017 Favorable AP 04/25/2017 Favorable With subcommittee recommendation – Criminal and Civil Justice	Favorable Yeas 17 Nays 0

A proposed committee substitute for the following bill (CS/SB 842) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
58	**CS/SB 842** Transportation / Galvano (Similar CS/CS/CS/H 695)	South Florida Regional Transportation Authority; Authorizing the South Florida Regional Transportation Authority, in conjunction with the operation of a certain commuter rail service, to have the power to assume specified indemnification and insurance obligations, subject to certain requirements; requiring the Department of Transportation to transfer specified amounts annually from the State Transportation Trust Fund to the authority, etc. TR 03/22/2017 Fav/CS ATD 04/13/2017 Fav/CS AP 04/25/2017 Fav/CS	Fav/CS Yeas 17 Nays 0
	With subcommittee recommendation – Transportation, Tourism, and Economic Development		
59	**CS/SB 1310** Governmental Oversight and Accountability / Mayfield (Identical CS/H 1141)	State Employment; Repealing provisions relating to Florida State Employees' Charitable Campaign; prohibiting an organization, entity, or person from intentionally soliciting state employees for fundraising or business purposes within specified areas during specified times, etc. GO 04/03/2017 Fav/CS AGG 04/13/2017 Favorable AP 04/25/2017 Not Considered	Not Considered
	With subcommittee recommendation – General Government		
60	**CS/SB 38** Judiciary / Benacquisto (Similar CS/CS/H 6511)	Relief of L.T. by the State of Florida; Providing for the relief of L.T.; providing an appropriation to compensate L.T. for injuries and damages sustained as a result of the negligence of employees of the Department of Children and Families, formerly known as the Department of Children and Family Services, etc. SM JU 02/21/2017 Fav/CS AHS 04/18/2017 Favorable AP 04/25/2017 Favorable	Favorable Yeas 17 Nays 0
	With subcommittee recommendation – Health and Human Services		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
61	**CS/SB 50** Judiciary / Gibson (Similar CS/H 6539)	Relief of Eddie Weekley and Charlotte Williams by the Agency for Persons with Disabilities; Providing for the relief of Eddie Weekley and Charlotte Williams, individually and as co-personal representatives of the Estate of Franklin Weekley, their deceased son, for the disappearance and death of their son while he was in the care of the Marianna Sunland Center, currently operated by the Agency for Persons with Disabilities; providing an appropriation to compensate them for the disappearance and death of Franklin Weekley, which were due to the negligence of the Department of Children and Families, etc. SM JU 02/21/2017 Fav/CS AHS 04/18/2017 Favorable AP 04/25/2017 Favorable	Favorable Yeas 16 Nays 0
	With subcommittee recommendation – Health and Human Services		
62	**CS/SB 1012** Banking and Insurance / Brandes (Similar CS/CS/CS/H 1007, Compare CS/H 1009, Linked CS/S 1014)	Insurer Anti-fraud Efforts; Requiring every insurer to designate at least one primary anti-fraud employee for certain purposes; requiring insurers to adopt an anti-fraud plan; revising insurer requirements in providing anti-fraud information to the Department of Financial Services; creating a grant program to fund the Insurance Fraud Dedicated Prosecutor Program within the department, etc. BI 04/03/2017 Fav/CS AGG 04/18/2017 Favorable AP 04/25/2017 Fav/CS	Fav/CS Yeas 16 Nays 0
	With subcommittee recommendation – General Government		
63	**CS/SB 1014** Banking and Insurance / Brandes (Similar CS/H 1009, Compare CS/CS/CS/H 1007, Linked CS/S 1012)	Public Records/Investigation and Tracking of Insurance Fraud/Department of Financial Services; Providing an exemption from public records requirements for reports, documents, or other information relating to the investigation and tracking of insurance fraud submitted by insurers to the Department of Financial Services; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 04/03/2017 Fav/CS GO 04/17/2017 Favorable AP 04/25/2017 Favorable	Favorable Yeas 15 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
64	**CS/SB 1312** Community Affairs / Perry (Similar CS/CS/H 1021, Compare H 567, CS/CS/S 860)	Construction; Authorizing solar energy systems manufactured or sold in the state to be certified by professional engineers; requiring the Florida Building Commission to use certain entities and codes for updates to the Florida Building Code; requiring local jurisdictions to reduce certain permit fees, etc. CU 03/28/2017 Favorable CA 04/17/2017 Fav/CS AP 04/25/2017 Not Considered RC	Not Considered

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 498
INTRODUCER:	Appropriations Committee; Judiciary Committee; Commerce and Tourism Committee; and Senator Young
SUBJECT:	Department of Agriculture and Consumer Services
DATE:	April 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Stallard	Cibula	JU	**Fav/CS**
3.	Blizzard	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 498 modifies various areas of law relating to the authority of the Department of Agriculture and Consumer Services (department). These modifications include:

- Allowing private investigative agency managers to manage multiple agencies or branches;
- Making substantial changes to regulations of surveyors and mappers;
- Clarifying fingerprint retention policies for specific partners and corporate officers of ch. 493, F.S., licensees;
- Removing inconsistent language regarding the terms of renewals for licensure under ch. 493, F.S.;
- Permitting the Florida Department of Law Enforcement to share mental health and substance abuse data from its Mental Competency database with the department for the purposes of determining eligibility of Class "G" and "K" applicants and licensees;
- Requiring ch. 493, F.S., licensees to reveal if they have been arrested to their employer within three days of the arrest, and granting the department authority to discipline licensees who fail to do so;
- Mandating that statewide firearm licensees complete training for each type of firearm carried in the course of his or her licensed duties;
- Creating a temporary suspension process for Class "G" or "K" licensees who are arrested for or formally charged with a firearms-related crime; and for ch. 493, F.S., licensees who are arrested for or formally charged with a forcible felony;

- Updating the Florida Do Not Call Program to make subscriptions indefinite, rather than for five years;
- Creating consistent penalties against intrastate household movers for failure to maintain motor vehicle and liability insurance;
- Exempting company gyms from registration as a health studio with the department;
- Removing taximeters and transportation measuring systems from the definition of a weight and measure, thereby reducing the department's regulatory authority over taximeters;
- Updating the surveyor and mapper intern qualifications to be based on the number of relevant semester hours completed.
- Deleting fees for the registration of a livestock mark or brand, and increasing the term of registration for such marks or brands from five to 10 years;
- Repealing a requirement that individuals re-mark or rebrand recently purchased cattle;
- Providing an exemption from registration for agricultural dealers who pay for their purchases with a credit card;
- Allowing the department to grant concealed weapon or firearm licenses to persons who have been granted relief from firearms disabilities;
- Reducing the concealed weapon or firearm license and renewal fees by five dollars; and
- Making technical changes and deleting outdated language.

The bill revises and eliminates certain licensing and renewal fees resulting in a significant revenue reduction in the General Inspection Trust Fund and the Division of Licensing Trust Fund within the department. However, the trust funds can sustain the revenue reductions associated with the elimination of the licensing and renewal fees. The department anticipates a reduction in expenditures associated with agriculture product dealers' licensure that will offset a portion of the revenue reductions in the General Inspection Trust Fund. See Section V.

The bill takes effect July 1, 2017.

II. Present Situation:

The Department of Agriculture and Consumer Services (department) has numerous and varied responsibilities, including safeguarding the public from unsafe or defective products and deceptive business practices, protecting the environment, supporting Florida's agricultural economy, and administering the state's firearms licensing scheme. These varied responsibilities are spread among the department's 12 divisions and six offices.[1]

The present situation relative to each section of the bill is discussed in the Effect of Proposed Changes section of this bill analysis. Generally, there will be a heading or subheading, a discussion of the present situation, then a discussion of the effect of the proposed changes.

[1] Florida Department of Agriculture and Consumer Services, *Divisions and Offices*. http://www.freshfromflorida.com/Divisions-Offices/ (last visited Mar. 7, 2017).

III. Effect of Proposed Changes:

Agriculture Education and Promotion Facility Grant

An agriculture education and promotion facility is an exhibition hall, arena, civic center, exposition center, or other capital project or facility that can be used for agricultural education, exhibitions, civic, and other events.[2] In 2002, the Legislature gave the Department of Agriculture and Consumer Services (department) authority to evaluate applications for grants for the construction or renovation of these facilities.[3] These grants are subject to appropriation provided in the General Appropriations Act specifically for these facilities.[4]

Section 1 amends s. 288.1175, F.S., to require that applications for an agriculture education and promotion facility grant be *postmarked, or electronically submitted* by October 1 of each year. Current law is less precise, merely stating that the application must be "submitted" by October 1.

Division of Agricultural Environmental Services

The Division of Agricultural Environmental Services (AES) supports state and federal regulatory programs regarding pesticide registration, testing, and regulation, and other related environmental and consumer protection issues.[5] The U.S. Environmental Protection Agency's (EPA) labeling requirements for pesticides and devices[6] and its Worker Protection Standard[7] provide a minimum standard on which the (AES) must base certain regulations.[8] Accordingly, the department maintains rules on these topics.[9]

Section 9 amends s. 487.2041, F.S., to delete an outdated reference to the department's adoption of rules ". . . during the 1995-1996 fiscal year . . ." to reflect the EPA's labeling requirement for pesticides and devices, and worker protection standard. This change does not alter the department's duties or authority.

Division of Licensing

The Division of Licensing (DOL), within the department, is responsible for protecting the public from unethical business practices by persons providing private security, private investigative, and recovery services. The DOL seeks to accomplish this through licensure and regulation of

[2] Section 288.1175(3), F.S.
[3] Ch. 2002-301, Laws of Fla.
[4] Section 288.1175(8), F.S.
[5] Florida Department of Agriculture and Consumer Services, *Division of Agricultural Environmental Services*, http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Environmental-Services (last visited Mar. 15, 2017).
[6] 40 C.F.R., Pt. 156
[7] 40 C.F.R., Pt. 170
[8] *See* 487.2041, F.S.
[9] See rules 5E-2.041, F.A.C., *Pesticides: Materials Incorporated by Reference*, 5E-2.011, F.A.C., *Pesticides: General Labeling Requirements for Pesticides*.

these industries.[10] Additionally, the DOL administers this state's concealed weapons and firearms licensing scheme.[11]

The DOL is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. The DOL also issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S. As of February 28, 2017, there were 1,910,038 holders of DOL-issued licenses. Of these, 1,733,487 were concealed weapons and firearms licensees.[12]

Licensure and Discipline of Private Investigators, Security Officers, Recovery Agents, and Related Licenses

Section 10 amends s. 493.6101, F.S., to authorize a licensed manager of a private investigative agency—a Class "M" licensee—to manage up to three offices within a 150-mile radius of the location listed on the agency's Class "A" license. However, these offices must consist of the location listed on the agency's Class "A" license and up to two branch offices, or these offices must consist of no more than three branch offices. Current law implies that a Class "M" licensee is limited to oversight of only one investigative agency or branch office at a time.[13]

Currently, the department requires applicants for licensure under ch. 493, F.S., to submit a full set of fingerprints, a fingerprint-processing fee, and a fingerprint retention fee with their initial application.[14] With this information, the department conducts an initial background check through the Federal Bureau of Investigation (FBI) and the Florida Department of Law Enforcement (FDLE). The department also retains the applicants' fingerprints in the statewide-automated biometric identification system[15] and in the national retained print arrest notification program for ongoing updates on arrests of its licensees.[16] The department may discipline a licensee based on his or her plea to, or conviction of, certain crimes.[17]

All licenses granted under ch. 493, F.S., are subject to renewal. Although a corporate officer or partner of, for example, a private investigative agency, is required to file a complete initial application *for his or her agency's licensure*, the corporate officer or partner is not granted a license as a result of his or her application. Instead, it is the *agency* that is granted the license. Therefore, though each corporate officer and partner are required to apply for an application for their company's licensure, they do not obtain individual licenses.[18]

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[10] This regulation is conducted pursuant to ch. 493, F.S.
[11] Florida Department of Agriculture and Consumer Services, *Division of Licensing*, http://www.freshfromflorida.com/Divisions-Offices/Licensing (last visited Mar. 16, 2017). Florida's concealed weapons and firearms licensing scheme is set forth at s. 790.06, F.S.
[12] Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited Mar. 15, 2017).
[13] Section 493.6101, F.S.
[14] Section 493.6105(3)(j), F.S.
[15] *See*, s. 943.05(2)(b), F.S.
[16] *See*, s. 493.6108(4)(b), F.S. To be precise, "[w]hen [FDLE] begins participation in the Federal Bureau of Investigation's national retained print arrest notification program, [it is then required to] enroll such fingerprints in the program."
[17] Section 493.6118, F.S.
[18] To be clear, an officer or partner could also apply for an individual license.

Section 11 amends s. 493.6105, F.S., to clarify that partners and corporate officers who do not also possess a ch. 493, F.S., license subject to renewal[19] are exempt from participation in the fingerprint retention requirements imposed on ch. 493, F.S., licensees.

Notifications

Section 13 amends s. 493.6108(5), F.S., to require that ch. 493, F.S., licensees notify their employer within three calendar days if they are arrested for any offense.

Section 17 amends s. 493.6118, F.S., to allow the department to take administrative action against its ch. 493, F.S., licensees for their failure to notify their employer within three calendar days if they are arrested for any offense.

Section 14 amends s. 493.6112, F.S., deleting a requirement that security officer and recovery agent schools licensed under ch. 493, F.S., notify the department of any hiring, termination, withdrawal, removal, replacement, or addition of the school's partners, officers, or employees. These schools are currently required to provide the department with information on their instructors, school facilities, and curricula elsewhere in statute.[20]

This section also clarifies that ch. 493, F.S., agency licensees are required to notify the department of a change in their employment rolls *within 15 calendar days* by a form submitted electronically to the department. Section 493.6112, F.S., currently requires that licensees notify the department "immediately" of such changes. According to the department, this requirement proves vague in practice and results in varying compliance.[21]

Mental Health History

The department has a duty to investigate whether any ch. 493, F.S., applicant has been adjudicated incompetent under ch. 744, F.S.,[22] or has been committed to a mental institution under the Florida Mental Health Act, ch. 394, F.S.[23, 24] The department may deny an application for licensure based on an applicant's:[25]

- Adjudication of incapacitation, unless the applicant's capacity has been judicially restored;
- Placement in a treatment facility for the mentally ill under ch. 394, F.S., or similar law in another state, unless the applicant's competency has been judicially restored;

[19] Section 493.6113, F.S., subjects all licenses granted under ch. 493, F.S., to renewal. Although a corporate officer or partner of—for example, a private investigative agency—is required to file a complete initial application, the corporate officer or partner is not granted a license as a result of his or her application (but his or her agency is). Therefore, corporate officers and partners are not required to renew a license that does not exist under ch. 493, F.S.

[20] See. ss. 493.6304 and 493.6406, F.S.

[21] Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 5 (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

[22] A court may grant a petition to determine incapacity that is filed by an adult; the petition must include allegations of the individual's incapacity and facts in support thereof. *See* s. 744.3201(1), F.S.

[23] Section 493.6108(1)(b), F.S.

[24] A commitment to an institution under ch. 394, F.S., may be voluntary or involuntary based on mental illness. A voluntary commitment requires the patient's consent, and an involuntary commitment requires a finding that the patient is likely to suffer harm to himself or herself, or that he or she poses a real and present threat of substantial harm to his or her well-being, or the well-being of others. Sections 394.462-.463, F.S.

[25] Section 493.6106, F.S.

- Diagnosis of an incapacitating mental illness, unless a Florida-licensed psychologist or psychiatrist certifies that the applicant does not currently suffer from mental illness;
- Chronic and habitual use of alcoholic beverages to the extent that his or her normal faculties are impaired;
- Commitment to a treatment facility for substance abuse;
- Being subject to a finding by a court that she or he is an habitual offender of disorderly intoxication;
- Convictions of driving under the influence, within the three-year period immediately preceding the application, unless the applicant can prove that she or he is not currently impaired and has successfully completed a rehabilitation course; or
- Having been found guilty of a controlled substance-related crime, unless the applicant establishes that she or he is not currently abusing any controlled substance and has successfully completed a rehabilitation course.

The department must further investigate the general mental history and current mental and emotional fitness, including drug or alcohol abuse, of any Statewide Firearms License (Class "G") or Firearms Instructor (Class "K") licensee.[26] The department may deny an application for licensure to a Class "G" or "K" applicant based on a history of mental illness or drug or alcohol abuse.

These investigations into mental health and substance abuse are largely limited to an inquiry by the department on the application for licensure; records of commitment under ch. 394, F.S., are confidential and exempt unless the applicant authorizes the release of the documentation.[27]

Currently, the department can access FDLE and clerks of courts records of individuals who are or were committed under chs. 394, 397, or 744, F.S., for the purpose of reviewing the fitness of applicants for concealed weapons licenses under ch. 790, F.S.[28] The FDLE maintains the Mental Competency Database (MECOM), which lists the names and related data of persons who are prohibited from purchasing a firearm based on adjudication of mental defectiveness (total mental incapacity) or commitment to mental institutions because of mental illness or substance abuse.[29] An individual may be removed from MECOM if he or she receives a relief from firearm disabilities under s. 790.065(2)(a)4.d., F.S.

Section 13 amends s. 493.6018, F.S., to authorize the FDLE authority to share data from the MECOM database with the department for the limited purpose of determining eligibility of Class "G" and "K" applicants and licensees.

[26] Section 493.6108(3), F.S.
[27] Section 394.4615, F.S.
[28] Sections 790.065(2)(a)4.c.(l), F.S. and 790.065(2)(a)4.f., F.S.
[29] Section 790.065, F.S.; Florida Department of Law Enforcement, *Mental Competency (MECOM) Database: Frequently Asked Questions* p. 5 (June 2, 2014), https://www.fdle.state.fl.us/cms/FPP/Documents/MECOMFAQs_Final_06022014.aspx (last visited Mar. 16, 2017).

Actions Against Licensees

Section 16 amends s. 493.6115, F.S., to require the department to review mental health and substance abuse data provided by the FDLE as part of its case-by-case determination whether a temporary Class "G" applicant is prohibited from licensure.

The department may pursue disciplinary administrative action against a current ch. 493, F.S., licensee based on a finding that he or she committed any of the acts prohibited in s. 493.6118, F.S., including:

- Being found guilty of, or entering a plea of guilty or nolo contendere to, or being convicted of a crime that directly relates to the business for which the license is held;
- Failure to maintain required commercial general liability coverage;
- Commission of an act of violence, or use of force on any person except in the lawful protection of one's self or another from physical harm;
- Failure to cooperate with a department investigation; or
- Violation of any other provision of ch. 493, F.S.

Administrative disciplinary action is reviewable under ss. 120.569 and 120.57, F.S. These types of administrative hearings generally permit the licensee to dispute the allegations made against him or her. An impartial hearing officer then makes findings of fact and findings of law, which result in a final determination of whether the department's case against the licensee is supported by clear and convincing evidence.

The department may also pursue an emergency suspension order under s. 120.60(6), F.S., if the department finds that the licensee poses a serious danger to the public health, safety, or welfare.[30] The emergency suspension order allows the department to require the licensee to cease and desist from continuing to act under his or her license, but the department is obligated to "promptly" institute a formal suspension or revocation proceeding pursuant to ss. 120.569 and 120.57, F.S. The cease and desist language of the emergency suspension order remains in effect until a final order reviewing the allegations against the licensee has been issued pursuant to the hearing under either ss. 120.569 or 120.57, F.S.

Section 17 amends s. 493.6118, F.S., to require the department to temporarily suspend a Class "G" or "K" licensee who is arrested for or formally charged with a firearms-related crime that would disqualify him or her from licensure. This section also grants the department authority to temporarily suspend any ch. 493, F.S., licensee who has been arrested for or formally charged with a forcible felony.[31]

The proposed temporary suspension would grant the licensee a right to hearing under ch. 120, F.S., but the scope of that hearing would be limited only to a determination of whether the licensee has been arrested for or charged with a disqualifying crime. Once a licensee is ultimately cleared of the allegations made in his or her underlying criminal case, the department

[30] *See also Allied Edu. Corp v. State, Dep't of Edu.*, 573 Sp. 2d 959, 1991 (Fla. 1st DCA 1991).

[31] Section 776.08, F.S., defines a "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

is required to lift the temporary suspension. However, when the criminal case results in a disqualifying disposition, the temporary suspension will remain in effect and the department is required to bring an administrative case under ch. 120, F.S., against the licensee to attempt to revoke his or her license.

Training and Certification for Ch. 493, F.S., Licensees

Applicants for licensure as a firearms instructor (Class "K") must undergo training and receive certification from either:

- The National Rifle Association (NRA) Private Security Firearm Instructor Certificate Program;[32] or
- A federal law enforcement agency's firearms instructor certificate program, e.g., through the U.S. Department of Homeland Security's Federal Law Enforcement Training Center (FLETC).[33]

The NRA's firearm instructor certificate expires after three years, unless the instructor successfully completes recertification with the NRA, which requires proof of 24 hours of continuing education.[34] The FLETC firearm instructor certificate does not expire, but the instructor may be required to obtain recertification by the agency (such as a local police department or sheriff's office) that sponsored the original certification of the trainee by FLETC.[35]

Section 11 amends s. 493.6105(6)(a), F.S., to make minor modifications to the application requirements for a firearms instructor (Class "K") license. Current law requires Class "K" applicants to submit one of a list of three certificates demonstrating competency as a firearms instructor. The bill requires two of these to be "valid" and to have been issued within three years of the submission of the application.

Sections 19 and 21 amend ss. 493.6203 and 493.6303, F.S., respectively, to delete out-of-date references and the requirement that private investigator interns and security officer licensees receive training in two parts. According to the department, the requirement that training be provided in two parts is cumbersome to both training schools and trainees.[36] The bill specifies that a re-applicant for a security officer license, whose license has been expired for one year or more, is considered an initial applicant and must submit proof of 40 hours of professional training.

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[32] National Rifle Association, *Instructor Development Schools*, http://le.nra.org/training/instructor-development-schools.aspx#schedule (last visited Mar. 15, 2017); National Rifle Association, *Recertification*, http://le.nra.org/training/recertification.aspx (last visited Mar. 15, 2017).
[33] U.S. Department of Homeland Security, Federal Law Enforcement Training Centers, *Firearms Instructor Training Program*, https://www.fletc.gov/training-program/firearms-instructor-training-program (last visited Mar. 15, 2017).
[34] National Rifle Association, *Recertification*, http://le.nra.org/training/recertification.aspx (last visited Mar. 15, 2017).
[35] Committee staff conversation with Federal Law Enforcement Training Center ("FLETC") representative (Mar. 1, 2017).
[36] Florida Department of Agriculture and Consumer Services *SB 498 Agency Analysis*, p. 7 (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

Currently, s. 493.6113(3)(b), F.S., requires a Class "G"[37] statewide firearms licensee to annually complete four hours of firearms recertification training.[38] The licensee must submit proof of his or her annual recertification training to the department. If the licensee fails to provide documentation of the training by the end of the first year of the license's two-year term, the license is automatically suspended until the licensee provides proof of the training. If the licensee fails to provide such documentation by the end of his or her license's term, the department may not renew the license until the applicant completes the initial licensing requirements, including at least 28 hours of range and classroom training.[39]

Class "G" licensees are currently permitted to carry up to two of the following types of firearms during the course of their licensed duties: a .38 caliber revolver, a .380 caliber or 9 millimeter semiautomatic pistol; a .357 caliber revolver with .38 caliber ammunition; a .40 caliber handgun; or a .45 ACP handgun.[40] Security officer licensees who also have a Class "G" license may only carry their firearm in a concealed manner if they are performing limited, special assignment duties or are performing bodyguard services.[41]

Section 15 amends s. 493.6113, F.S., to require statewide firearm licensees, Class "G" licensees,[42] to perform and successfully complete training for *each type and caliber* of firearm that they will carry in the course of their duties.

Section 16 updates an outdated cross-reference in s. 493.6115, F.S., to clarify under what circumstances security officer licensees who also have a Class "G" license may carry their authorized firearm in a concealed manner.

Under current law, recovery agents and interns (also known as Class "E" or "EE" licensees, or repossession service agents) are required to meet the basic licensure requirements in ch. 493, F.S., and complete a minimum of 40 hours of professional training at an accredited recovery agent school.[43]

Section 24 amends s. 493.6403, F.S., to require these licensees to *submit proof of successful completion of* the professional training, and submit proof thereof to the department. This section also deletes an outdated reference in s. 493.6403, F.S.

Concealed Weapon or Firearm Licenses

Section 39 amends s. 790.06, F.S., to allow the department to grant a concealed weapon license to applicants who have been committed for a mental health issue or abuse of a controlled substance; or adjudicated incapacitated, but have subsequently been granted relief from firearms

[37] A Class "G" licensee permits Class "C," "CC," "D," "M," "MA," or "MB" licensees to bear a firearm in the course of their licensed duties. Section 493.6115(2), F.S.
[38] The department may waive the annual firearms recertification training for certain applicants, such as state and federal law enforcement officers and correctional officers. Section 493.6113(3)(b)1.-3., F.S.
[39] The initial training criteria for Class "G" licensees are found in s. 493.6105(5), F.S.
[40] Section 493.6115(6), F.S.
[41] Section 493.6305, F.S.
[42] Class "G" licenses are supplemental licenses that require as a prerequisite that the applicant is currently licensed with the Department as either a Class "C," "CC," "D," "M," "MA," or "MB" licensee. *See* s. 493.6115, F.S.
[43] Section 493.6403(2), F.S.

disabilities pursuant to s. 790.065(2)(a)4.d., F.S., or similar law. This brings the department's practices into line with the FDLE's regulations on the sale of guns.[44]

This section also implements a five dollar fee reduction for concealed weapon or firearm license and renewal fees.[45]

Technical Changes

Section 22 makes technical changes to s. 493.6304(1), F.S.

Sections 12, 18, 20, and 23 amend ss. 493.6107, 493.6202, 493.6302, and 493.6402, respectively, to delete erroneous references to "biennial" license fees in ch. 493, F.S. License renewals occur on either biennial or triennial cycles, depending on the type of license.[46] These amendments remedy inconsistencies within the chapter and between the chapter and related rules.

Division of Consumer Services

The department's Division of Consumer Services (DCS) regulates certain businesses, including commercial weight-loss practices, telephone solicitation, pawnshops, health studios, sellers of travel, and telemarketing. The DCS also functions as a clearinghouse for consumer complaints.

Board of Professional Surveyors and Mappers

The department's Board of Professional Surveyors and Mappers (board) is tasked with regulating professional surveyors and mappers, as well as businesses that offer surveying and mapping services.[47] The board's regulatory duties include:[48]

- Adopting rules detailing the review and approval of courses of study in surveying and mapping;
- Determining the moral character of applicants for licensure;
- Instituting by rule the criteria and course content for continuing education courses;
- Approving and disciplining providers of continuing education;
- Holding probable cause panel hearings to determine whether to move forward with disciplinary proceedings against a licensee; and
- Issuing final orders in disciplinary cases.

The practice of surveying and mapping, generally, is the determination of the facts of size, shape, topography, tidal datum planes, legal or geodetic location or relation, and orientation of improved or unimproved real property through the direct measurement or from certifiable measurement through photogrammetric procedures.[49]

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[44] *See*, s. 790.065, F.S.
[45] A concealed weapon or firearm license fee is currently $60; a renewal fee is $50. Section 790.06(5)(b), F.S.
[46] *See* s. 493.6113, F.S.
[47] Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, *Frequently Asked Questions* (Jun. 2011), http://www.freshfromflorida.com/content/download/21271/398679/boardFAQ.pdf (last visited Mar. 15, 2017).
[48] *See*, ch. 472, F.S.
[49] Section 472.005(3), F.S.

Surveyors and mappers must meet the following qualifications to be licensed by the department:[50]

- Be of good moral character;
- Pass a licensure examination; and
- Meet specific education and experience requirements.

Section 2 amends s. 472.003, F.S., to exempt subcontractors of registered surveyors and mappers or their businesses from registration under ch. 472, F.S. The subcontractor must be subordinate to, and under the direct control and personal supervision of a registered surveyor and mapper in order to qualify for this exemption.

Section 3 amends definitions in s. 472.005, F.S., to clarify that the practice of surveying and mapping includes the determination of the volume of bodies of water, and of the orientation of personal property attached to any improved or unimproved real property.

Section 4 amends s. 472.013, F.S., to broaden the prerequisite course of education for surveyor and mapper licensees to include a bachelor's degree in surveying and mapping *or any similarly titled program*. This section permits applicants for licensure as a surveyor and mapper intern to qualify by completing two years of college education in surveying, mapping, mathematics, photogrammetry, forestry, civil engineering, or land law and the physical sciences, in addition to accruing at least two years in work as a subordinate to a registered surveyor and mapper. This section also deletes certain requirements of the board relating to examination prerequisites.
Section 5 amends s. 472.015, F.S., to clarify the qualifications for a license by endorsement related to an applicant meeting certain criteria *at the time of application* and to delete outdated language related to photogrammetry.

Section 6 amends s. 472.018, F.S., to grant the board the power to establish the criteria for continuing education providers, and other continuing education requirements, including the method of delivery and the carryover of not more than 12 hours for each license renewal cycle.

Section 7 amends s. 472.025, F.S., to require registered surveyors and mappers to receive and use a seal approved by the board, but deletes the requirement that the seal be an impression-type metal seal.

Surveyors and mappers are required to submit to the department a copy of each elevation certificate that she or he completes.[51]

Section 8 amends s. 472.0366, F.S., to clarify that a surveyor and mapper may submit a copy of an elevation certificate to the department, and the copy need not be signed and sealed. However, the surveyor and mapper must maintain the original signed and sealed copy in his or her own records.

[50] Sections 472.013 and 472.015, F.S.
[51] Section 472.0366(2), F.S.

Do Not Call List

The department administers the Florida Do Not Call Program, which prohibits unsolicited phone calls to consumers by telephone solicitors. A consumer must request to be placed on the department's directory of those who do not wish to be contacted, and such request lasts for five years.[52] The consumer can re-subscribe every five years. Under s. 501.059(5), F.S., a telephone solicitor is also prohibited from calling a consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call that is:

- Made by or on behalf of the seller whose goods or services are offered; or
- Made on behalf of a charity for which a charitable contribution is solicited.

Section 26 amends s. 501.059, F.S., deleting the five-year subscription duration from the Do Not Call Program, thereby making each a lifetime subscription. However, subscribers may request to be removed from the program at any time.

Health Studios

The Health Studio Act, ss. 501.012-501.019, F.S., regulates health studios that enter into contracts for health studio services with consumers. "Health studios" includes, among other things, a gym that offers its members the use of weight-training and cardiovascular equipment. The act requires studios to:

- Register with the department;
- Include specific provisions in every contract with a consumer, such as the consumer's total payment obligations, and cancellation provisions;
- Provide a security bond, generally ranging from $10,000 to $25,000, depending on the value of outstanding contracts with the studio; and
- Refrain from prohibited practices, such as committing an intentional fraud.

The following health studios or health-related businesses are exempt from registration with the department:[53]

- Nonprofit organizations that have tax-exempt status with the Internal Revenue Service;
- Gymnastics schools that engage in instruction and training only;
- Golf, tennis, or racquetball clubs that do not offer physical exercise equipment;
- Country clubs that primarily provide social or recreational amenities to its members; and
- Personal trainers who do not have an established place of business and who do not accept payment for their services more than 30 days in advance.

The department can seek an injunction or civil penalties for any violation of the act, and violations are generally misdemeanors. The department may also institute administrative prosecution of a health studio in violation of ss. 501.015 or 501.016, F.S.

Section 25 amends s. 501.013, F.S., to exempt from registration as a health studio with the department any program or facility offered by an organization for the exclusive use of its employees and their family members, such as a gym within a corporate headquarters.

[52] Section 501.059(3)-(4), F.S.
[53] Sections 501.0125-.013, F.S.

Intrastate Household Movers

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover engaged in intrastate transportation or shipment of household goods that originate and terminate in the state.[54]

Section 507.04, F.S., requires movers to maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least $10,000 per shipment and not less than 60 cents per pound, per article.[55] Movers who operate fewer than two vehicles are required only to carry either a performance bond or a $25,000 certificate of deposit in lieu of liability insurance.[56] A mover who fails to maintain the required liability insurance is subject to:

- Immediate suspension of the license by the department;
- Immediate injunction prohibiting the mover from operating in the state; and
- Civil liability for any injuries that arise.[57]

However, under current law, the department has no similar penalties available in the case of a mover who fails to maintain motor vehicle insurance. The department must wait until the mover files for renewal of his or her license with the department to be able to take any action.[58] The department cites this difference in penalty scheme as a procedural burden for the department and a possible danger to consumers, who may develop an incorrect impression that a mover who lacks motor vehicle insurance is in good standing with the department.[59]

Section 27 amends s. 507.04, F.S., to grant the department the same penalty scheme for a mover's failure to maintain both liability and motor vehicle insurance. This will make the department's procedures more consistent.

Bureau of Standards

The department's Bureau of Standards is generally responsible for the inspection of weights and measures devices or instruments in Florida. This includes, but is not limited to, the prescription of the appropriate unit of weight or measurement to be used, testing of weights and measuring instruments used by any city or county, and inspection of retail scales that are used to determine the weight, measurement or total count of commodities offered for sale, such as fruit and vegetables at a grocery store. For the purpose of consumer protection, the Bureau of Standards 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.

[54] Section 507.02, F.S.
[55] Section 507.04(4), F.S.
[56] Section 507.04(1)(b), F.S.
[57] Section 507.04(1), F.S.
[58] Section 507.04(2)-(3), F.S.
[59] Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 9 (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

A taximeter is a device that automatically calculates and indicates the charge for the hire of a vehicle, such as a taxi.[60]

Sections 28, 29, and 30 amend ss. 531.37, 531.61, and 531.63, F.S., respectively, to delete the department's authority to regulate taximeters, and remove related language. The bill also expressly frees the department from regulating "transportation measurement systems," which may include what are effectively taximeters linked to servers that may be in other states. These transportation measurement systems may be used by services like Uber.

Division of Animal Industry

The department's Division of Animal Industry (DAI) safeguards animal and public health, and maintains market access for Florida's animals and animal products by surveilling the movement of animals into and throughout the state, and monitoring any animal disease that may arise.[61] One estimate concludes that approximately 1.5 million cattle are currently raised in Florida.[62] These cattle must have official identification unless the cattle are:

- Moving directly to slaughter or through one approved livestock market and then directly to slaughter;
- Moving to an approved tagging site; or
- Being moved from one premises to another while remaining under common ownership as part of normal farm operations.[63]

Federal law provides identification requirements for cattle transported across interstate lines.[64]

Section 31 amends s. 534.021, F.S., to replace the requirement that an application for livestock mark or brand registration be accompanied by a "facsimile" of the brand or mark, with a requirement that the application include a "detailed drawing" of the brand or mark.

Section 32 amends s. 534.041, F.S., to extend the term of a livestock mark or brand registration from five to 10 years, and deletes the five dollar registration renewal fee.

Section 33 repeals s. 534.061, F.S., which requires a person who purchases cattle to re-mark or rebrand the cattle within 10 days. The department states that the DAI does not currently regulate such transfers.[65]

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[60] 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. 15, 2017).
[61] Florida Department of Agriculture and Consumer Services, *Division of Animal Industry*, http://www.freshfromflorida.com/Divisions-Offices/Animal-Industry (last visited Mar. 16, 2017).
[62] *Id*.
[63] Florida Department of Agriculture and Consumer Services, *Summary of Cattle Traceability Requirements* (Aug. 21, 2014), http://www.freshfromflorida.com/content/download/38829/857923/SummaryRequirements.pdf (last visited Mar. 16, 2017). *See also*, Rule 5C-31, Fla. Admin. Code.
[64] *Id*. *See also*, Ch. 9, C.F.R., pt. 86.
[65] Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

Division of Fruit and Vegetables

The Division of Fruit and Vegetables (DFV) inspects and certifies all state and federal marketing orders—the program that collectivizes agriculture producers for the purpose of marketing and selling their products.[66] As part of the marketing order program, the department enters into contracts to promote the agriculture producers' products; these contracts are not subject to the competitive bidding process under s. 287.057, F.S. However, in each instance that the DFV enters into a contract without competitive bidding, the director of the DFV must file a report to justify the contract process with the department's internal auditor.[67]

The Division of Marketing and Development supervised the marketing order process, until a recent reorganization of the division's duties.[68]

Section 35 amends s. 573.118, F.S., to require the director of the Division of Fruit and Vegetables, rather than the Division of Marketing and Development, to file each report justifying a contract or agreement entered into without competitive bidding in the marketing order process.

Florida Forest Service

The Florida Forest Service (FFS) is dedicated to management of state forests and Florida's forest resources.[69] The FFS constructs structures on forest land to support its duties thereon, including wildfire, educational, camping and recreational, and law enforcement facilities. Currently, s. 590.02, F.S., grants the FFS exclusive authority to enforce the Florida Building Code relating to the wildfire and law enforcement structures built by the FFS.

Section 36 amends s. 590.02, F.S., to require the department to enforce the Florida Building Code as it relates to all FFS facilities, in addition to the FFS's law enforcement and wildfire facilities.

Division of Aquaculture

Pursuant to ch. 597, F.S., the Division of Aquaculture coordinates and assists with the development of aquaculture in Florida, and regulates aquafarms to protect and conserve Florida's aquatic organisms.[70]

The department issues certificates of registration under s. 597.004, F.S., to aquaculture producers who must agree to submit to the department's best management practices.[71] These certificates

[66] Florida Department of Agriculture and Consumer Services, *Division of Fruits and Vegetables*, http://www.freshfromflorida.com/Divisions-Offices/Fruit-and-Vegetables (last visited Mar. 16, 2017).
[67] Section 573.118, F.S.
[68] Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (on file with the Senate Committee on Judiciary).
[69] Florida Department of Agriculture and Consumer Services, *Florida Forest Service*, http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service (last visited Mar. 16, 2017). *See also*, s. 590.01, F.S.
[70] Florida Department of Agriculture and Consumer Services, *Division of Aquaculture*, http://www.freshfromflorida.com/Divisions-Offices/Aquaculture (last visited Mar. 16, 2017).
[71] Section 597.004, F.S.

permit the aquaculture producer to sell all aquaculture products except those otherwise prohibited by law, and those for which the origin of the product is unknown.[72]

Section 37 amends s. 597.004, F.S., to clarify that dealers licensed pursuant to part VII of ch. 379, F.S., ("Nonrecreational Licenses") including downline sellers of aquaculture products, such as wholesale and retail saltwater products dealers and freshwater fish dealers (excepting the initial aquaculture producer sellers), are not required to be certified aquaculture producers under s. 597.004, F.S. According to the department, the Florida Fish and Wildlife Commission requested this clarification.[73]

Office of Agricultural Law Enforcement

The Division of Agricultural Law Enforcement (ALE) is the law enforcement arm of the department. As part of its duties, ALE operates 23 agricultural inspection stations; investigates crimes involving agriculture, as well as unfair and deceptive trade practices; and partners with federal, state, and local law enforcement agencies to coordinate the Domestic Marijuana Eradication Task Force.[74]

A dealer in agricultural products is any person, partnership, corporation, or other business entity that is engaged in the purchase, receipt, or solicitation of agricultural products from the initial producer, for the purpose of resale or processing for sale.[75] The ALE regulates these dealers in order to protect sellers of agricultural products (farmers). The Legislature created this duty because the recovery of agricultural products from a dealer who is ultimately unable to pay the producer for his or her products is impractical because of the quick decay or consumption of agricultural products.[76]

Section s. 640.16, F.S., exempts certain dealers from registration as a dealer, if the dealer:
- Pays for the products in cash at the time of the purchase;
- Is a bonded licensee under the federal Packers and Stockyards Act; or
- Purchases less than $1,000 of agricultural products during a one-month period.

Section 38 amends s. 640.16, F.S., to provide an additional exemption from registration for those dealers who pay for the products with a credit card at the time of the agricultural purchase.

Department Authority to Inspect Raw Food Facilities

Section 34 amends s. 570.07, F.S., to require the department to perform food safety inspection services where raw agricultural commodities are grown, produced, harvested, held, packed, or repacked.

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[72] Section 597.004(5), F.S.
[73] Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 10 (Feb. 8, 2017) (on file with the Senate Committee on Judiciary).
[74] Florida Department of Agriculture and Consumer Services, Office of Agricultural Law Enforcement, http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Law-Enforcement (last visited Mar. 16, 2017).
[75] Section 604.15(2), F.S.
[76] Section 604.151, F.S.

Section 40 provides an effective date of 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:

Private investigator, or Class "M," licensees under ch. 493, F.S., may be able to take on additional employment to supplement their income since they may act as a manager at multiple private investigative agencies or branches.

Those who register a livestock brand or mark will see a reduction in associated fees. Agricultural dealers who pay for their purchases with a credit card are no longer required to pay a registration fee.

The licensure and renewal fees for concealed weapons and firearms licensees issued pursuant to s. 790.06, F.S., are reduced by five dollars.

Those who operate taximeters will no longer incur registration fees and related regulations under the bill.

C. Government Sector Impact:

The bill has a negative impact on revenues in the General Inspection Trust Fund and the Division of Licensing Trust Fund within the Department of Agriculture and Consumer Services (department) beginning in Fiscal Year 2017-2018.[77] Additionally, both trust funds combined will have a corresponding recurring reduction in the service charges sent to the General Revenue Fund of approximately $103,112.

[77] Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (on file with the Senate Committee on Judiciary).

The department estimates a loss of $388,051 due to the elimination of the livestock brand registration renewal fee, the exemption for licensure of agriculture products dealers and the elimination of taximeter permit fees. However, the department anticipates a decrease in expenditures of $250,944 that will partially offset the revenue reduction associated with the elimination of the costs relating to these programs.

General Inspection Trust Fund Revenue Reductions

	FY 2017-18	FY 2018-19	FY 2019-20
Taximeter Fee Reduction	(129,500)	(129,500)	(129,500)
Livestock Brand Registration Fees	(7,647)	(7,647)	(7,647)
Agriculture Dealer Licenses Exemption	(250,944)	(240,959)	(240,959)
Total Revenue Reduction	(388,051)	(378,106)	(378,106)
8% Surcharge to GR Reduction	(31,044)	(30,248)	(30,248)

The department estimates a revenue reduction of $1,801,692 in the Division of Licensing Trust Fund beginning in Fiscal Year 2017-2018 due to the fee reduction of five dollars relating to concealed weapon license applications and renewals, and the elimination of multiple licenses required for private investigative agency managers. The department has assessed the balance of the trust fund for the concealed weapons program and found that the program can sustain the license fee reduction.

Division of Licensing Trust Fund Revenue Reductions

	FY 2017-18	FY 2018-19	FY 2019-20
Multiple Licenses for Private Investigative Agency Managers	(6,562)	(6,748)	(6,748)
Concealed Weapon License Fee	(1,795,130)	(1,706,115)	(1,652,295)
Total Revenue Reduction	(1,801,692)	(1,712,863)	(1,659,043)
4% Surcharge to GR Reduction	(72,068)	(68,515)	(66,3622)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.1175, 472.003, 472.005, 472.013, 472.015, 472.018, 472.025, 472.0366, 487.2041, 493.6101, 493.6105, 493.6107, 493.6108, 493.6112, 493.6113, 493.6115, 493.6118, 493.6202, 493.6203, 493.6302, 493.6303, 493.6304, 493.6402, 493.6403, 501.013, 501.059, 507.04, 531.37, 531.61, 531.63, 534.021, 534.041, 570.07, 573.118, 590.02, 597.004, 604.16, and 790.06.

This bill repeals section 534.061 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 25, 2017:
The committee substitute:

- Provides that an individual with an expired security officer license (Class "D") is considered an initial applicant, rather than a renewal applicant, under certain circumstances;
- Replaces the term "digital networks" with "transportation measurement systems," relating to activities not regulated by the department;
- Updates the eligibility criteria for surveyor and mapper interns to be based on the number of relevant semester hours completed at an accredited college or university, rather than years of school completed;
- Retains provisions in current law requiring a licensee or business entity to provide notice if it does not carry professional liability insurance; and
- Provides rulemaking authority for the Board of Professional Surveyors and Mappers relating to continuing education requirements.

CS/CS by Judiciary on March 22, 2017:
The committee substitute:

- Requires the department to perform food safety inspection services where raw agricultural commodities are grown, produced, harvested, held, packed, or repacked;
- Deletes Sections 8 and 9 of the underlying bill, which added language duplicating current law; and
- Limits a manager of a private investigative agency to managing three offices.

CS by Commerce and Tourism on March 6, 2017:

- Makes substantial changes to regulations and qualifications of surveyors and mappers in ch. 472, F.S.;
- Permits the use of the FDLE's MECOM database for only Class "G" and "K" applicants and licensees;
- Provides for the temporary suspension of Class "G" or "K" licensees who are arrested for or charged with a firearms-related crime, and for ch. 493, F.S., licensees who are arrested for or charged with a forcible felony;
- Exempts company gyms that are used only by employees and their families from registration as a health studio with the department;
- Deletes the regulation of taximeters from the department's duties, and clarifies that digital networks are not regulated by the department;
- Allows the department to provide a concealed weapon or firearm license to applicants who have had their firearms disabilities restored pursuant to s. 790.065(2)(a)4.d., F.S.; and
- Reduces the concealed weapon or firearm license and renewal fees by five dollars.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
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The Committee on Appropriations (Young) recommended the following:

Senate Amendment (with title amendment)

Delete lines 170 - 435
and insert:
board.
Section 3. Subsections (4) and (10) of section 472.005, Florida Statutes, are amended to read:
472.005 Definitions.—As used in ss. 472.001-472.037:
(4)(a) "Practice of surveying and mapping" means, among other things, any professional service or work, the adequate

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performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence of the act of measuring, locating, establishing, or reestablishing lines, angles, elevations, natural and manmade features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surface of bodies of water, for the purpose of determining, establishing, describing, displaying, or interpreting the facts of size, volume, shape, topography, tidal datum planes, and legal or geodetic location or relocation~~, and orientation of improved or unimproved real property and appurtenances thereto, including acreage and condominiums~~.

(b) The practice of surveying and mapping also includes, but is not limited to, photogrammetric control; orientation of improved or unimproved real property and appurtenances and personal property attached thereto, including acreage and condominiums; the monumentation and remonumentation of property boundaries and subdivisions; the measurement of and preparation of plans showing existing improvements after construction; the layout of proposed improvements; the preparation of descriptions for use in legal instruments of conveyance of real property and property rights; the preparation of subdivision planning maps and record plats, as provided for in chapter 177; the determination of, but not the design of, grades and elevations of roads and land in connection with subdivisions or divisions of land; and the creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them.


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(10) "Subordinate" means a person ~~an employee~~ who performs work under the direction, supervision, and responsible charge of a person who is registered under this chapter.

Section 4. Subsections (2) and (3) of section 472.013, Florida Statutes, are amended to read:

472.013 Examinations, prerequisites.—

(2) An applicant shall be entitled to take the licensure examination to practice in this state as a surveyor and mapper if the applicant is of good moral character and has satisfied one of the following requirements:

(a) The applicant has received a bachelor's degree, its equivalent, or higher in surveying and mapping or a similarly titled program, including, but not limited to, geomatics, geomatics engineering, and land surveying, ~~of 4 years or more in a surveying and mapping degree program~~ from a college or university recognized by the board and has a specific experience record of 4 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. ~~The completed surveying and mapping degree of 4 years or more in a surveying and mapping degree program must have included not fewer than 32 semester hours of study, or its academic equivalent, in the science of surveying and mapping or in board-approved surveying-and-mapping-related courses.~~ Work experience acquired as a part of the education requirement may ~~shall~~ not be construed as experience in responsible charge.

(b) The applicant has received a bachelor's degree, its

equivalent, or higher in a ~~is a graduate of a 4-year~~ course of study, other than in surveying and mapping, at an accredited college or university and has a specific experience record of 6 or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, 5 years of which shall be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. ~~The course of study in disciplines other than surveying and mapping must have included not fewer than 32 semester hours of study or its academic equivalent.~~ The applicant must have completed a minimum of 25 semester hours from a college or university approved by the board in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Any of the required 25 semester hours of study completed not as a part of the bachelor's degree, its equivalent, or higher may ~~4-year course of study shall~~ be approved at the discretion of the board. Work experience acquired as a part of the education requirement may ~~shall~~ not be construed as experience in responsible charge.

(3) A person shall be entitled to take an examination for the purpose of determining whether he or she is qualified ~~to practice in this state~~ as a surveyor and mapper intern if:

(a) The person is in good standing in, or is a graduate of, a bachelor degree program, its equivalent or higher, at an accredited college or university and has obtained a minimum of 25 semester hours in surveying, mapping, mathematics, photogrammetry, forestry, civil engineering, or land law and the


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physical sciences, or any combination thereof; or

(b) The person has obtained, from an accredited college or university, a minimum of 15 semester hours in surveying, mapping, mathematics, photogrammetry, forestry, civil engineering, or land law and the physical sciences, or any combination thereof, and has a specific surveying and mapping experience record of 2 or more years as a subordinate to a registered surveyor and mapper.

This subsection may not be construed as a substitute for the degree requirement to take the exams for licensure as outlined in subsection (2) ~~the person is in the final year, or is a graduate, of an approved surveying and mapping curriculum in a school that has been approved by the board~~.

Section 5. Paragraph (a) of subsection (5) of section 472.015, Florida Statutes, are amended to read:

472.015 Licensure.—

(5)(a) The board shall certify as qualified for a license by endorsement an applicant who, at the time of application:

1. Holds a valid license to practice surveying and mapping issued before ~~prior to~~ July 1, 1999, by another state or territory of the United States; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 472.013; and has a specific experience record of at least 8 years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, 6 years of which must be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the

surveying and mapping work performed; or

2. Holds a valid license to practice surveying and mapping issued by another state or territory of the United States if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in Florida at the time the license was issued.~~; or~~

~~3. Is a practicing photogrammetrist who holds the Certified Photogrammetrist designation of the American Society for Photogrammetry and Remote Sensing and held such designation on or before July 1, 2005; is a graduate of a 4-year course of study at an accredited college or university; and has a specific experience record of 6 or more years as a subordinate to a Certified Photogrammetrist of the American Society for Photogrammetry and Remote Sensing in the active practice of surveying and mapping, 5 years of which shall be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The course of study must have included not fewer than 32 semester hours of study or its academic equivalent. The applicant must have completed a minimum of 25 semester hours from a college or university approved by the board in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Any of the required 25 semester hours of study completed not as a part of the 4-year course of study shall be approved at the discretion of the board. Work experience acquired as a part of the education requirement shall not be construed as experience in responsible charge. The applicant must have applied to the~~

~~department for licensure on or before July 1, 2007.~~

Section 6. Section 472.018, Florida Statutes, is amended to read:

472.018 Continuing education.—The department may not renew a license until the licensee submits proof satisfactory to the board that during the 2 years before her or his application for renewal the licensee has completed at least 24 hours of continuing education. The board may provide by rule for continuing education hours carryover for each renewal cycle not to exceed 12 hours.

(1) The board shall adopt rules to establish the criteria ~~and course content~~ for continuing education providers ~~courses~~. The rules may provide that up to a maximum of 25 percent of the required continuing education hours may be fulfilled by the performance of pro bono services to the indigent or to underserved populations or in areas of critical need within the state where the licensee practices. The board must require that any pro bono services be approved in advance in order to receive credit for continuing education under this section. The board shall use the standard recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services in determining indigency. The board may adopt rules that may provide that a part of the continuing education hours may be fulfilled by performing research in critical need areas or for training leading to advanced professional certification. The board may adopt rules to define underserved and critical need areas. The department shall adopt rules for the administration of continuing education requirements adopted by the board.


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(2) The board may provide by rule the method of delivery and criteria that ~~distance learning~~ may be used to satisfy continuing education requirements.

(3) The board may prorate the required continuing education hours in the following circumstances:

(a) For new licensees:

1. By requiring half of the required continuing education hours for any applicant who becomes licensed with more than half the renewal period remaining and no continuing education for any applicant who becomes licensed with half or less than half of the renewal period remaining; or

2. Requiring no continuing education hours until the first full renewal cycle of the licensee.

(b) When the number of hours required is increased by law or the board.

(4) Upon the request of a licensee, the provider must also furnish to the department information regarding courses completed by the licensee, in an electronic format required by rule of the department.

(5) Each continuing education provider shall retain all records relating to a licensee’s completion of continuing education courses for at least 4 years after completion of a course.

(6) A continuing education provider may not be approved, and the approval may not be renewed, unless the provider agrees in writing to provide such cooperation under this section as required by the department.

(7) For the purpose of determining which persons or entities must meet the reporting, recordkeeping, and access

provisions of this section, the board by rule shall adopt a definition of the term "continuing education provider" applicable to the profession's continuing education requirements. The intent of the rule is to ensure that all records and information necessary to carry out the requirements of this section are maintained and transmitted accordingly and to minimize disputes as to what person or entity is responsible for maintaining and reporting such records and information.

(8) The board shall approve the providers of continuing education. The approval of continuing education providers ~~and courses~~ must be for a specified period of time, not to exceed 4 years. An approval that does not include such a time limitation may remain in effect under this chapter or the rules adopted under this chapter.

(9) The department may fine, suspend, or revoke approval of any continuing education provider that fails to comply with its duties under this section. The fine may not exceed $500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted pursuant to s. 472.033.

(10) The board shall issue an order requiring a person or entity to cease and desist from offering any continuing education programs for licensees, and fining, suspending, or revoking any approval of the provider previously granted by the board if the board determines that the person or entity failed to provide appropriate continuing education services ~~that conform to approved course material~~. The fine may not exceed $500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section

434084

shall be conducted under s. 472.033.

(11) The board may establish, by rule, a fee not to exceed $250 for anyone seeking approval to provide continuing education courses and may establish, by rule, a biennial fee not to exceed $250 for the renewal of providership of such courses. Such postlicensure education courses are subject to the reporting, monitoring, and compliance provisions of this section.

(12) The department and the board may adopt rules under

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

And the title is amended as follows:

Delete lines 13 - 30

and insert:

revising the standards for applicant eligibility to take the licensure examination to practice as a surveyor or mapper; amending s. 472.015, F.S.; revising the qualifications for licensure by endorsement; amending s. 472.018, F.S.; authorizing the board to provide by rule for the carryover hours of continuing education requirements up to a specified maximum; deleting a requirement that the board approve course content for continuing education courses; requiring the board to adopt rules to establish criteria for continuing education providers; authorizing the board to provide by rule the method of delivery and criteria that may be used to satisfy continuing education requirements; deleting a requirement that the board must issue cease and desist orders and enact certain penalties for continuing


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education providers offering services that fail to conform to approved course material; amending s. 472.025, F.S.;

209084

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
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	.	
	.	

The Committee on Appropriations (Young) recommended the following:

Senate Amendment (with title amendment)

Delete lines 968 - 994

and insert:

(4)(a) ~~Effective January 1, 2012,~~ An applicant for a Class "D" license must submit proof of successful completion of a minimum of 40 hours of professional training at a school or training facility licensed by the department. ~~The training must be provided in two parts, one 24-hour course and one 16-hour course.~~ The department shall by rule establish the general

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content and number of hours of each subject area to be taught.

(b) ~~An individual who submits an application for a Class "D" license on or after January 1, 2007, through December 31, 2011, who has not completed the 16-hour course must submit proof of successful completion of the course within 180 days after the date the application is submitted. If documentation of completion of the required training is not submitted by that date, the individual's license shall be automatically suspended until proof of the required training is submitted to the department. A person licensed before January 1, 2007, is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was licensed applies.~~

~~(c)~~ Upon reapplication for a license, an individual whose license has been ~~is suspended or revoked pursuant to paragraph (b), or is~~ expired for ~~at least~~ 1 year or more~~,~~ is considered~~,~~ ~~upon reapplication for a license,~~ an initial applicant and must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department as provided in paragraph (a) before a license is issued.

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

And the title is amended as follows:

Delete lines 91 - 95

and insert:

provisions; making technical changes; specifying that re-applicants for a license expired for 1 year or more

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are considered initial applicants and must submit proof of certain training before issuance of a new license; amending s. 493.6304, F.S.;

761370

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Young) recommended the following:

Senate Amendment (with title amendment)

Delete line 1097

and insert:

transportation measurement systems, and those weights and measures used for the

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

And the title is amended as follows:

Delete line 111

761370

and insert:

measures" to exclude taximeters and transportation measurement systems;

By the Committees on Judiciary; and Commerce and Tourism; and Senator Young

590-02719-17 2017498c2

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 288.1175, F.S.; specifying that applications for funding for certain agriculture education and promotion facilities must be postmarked or electronically submitted by a certain date; amending s. 472.003, F.S.; specifying that certain persons under contract with registered or certified surveyors and mappers are not subject to the provisions of ch. 472, F.S.; amending s. 472.005, F.S.; redefining the terms "practice of surveying and mapping" and "subordinate"; amending s. 472.013, F.S.; revising the standards for when an applicant is eligible to take the licensure examination to practice as a surveyor and mapper; amending s. 472.015, F.S.; revising the qualifications for licensure by endorsement; revising the requirements for a certain notice relating to insurance coverage; amending s. 472.018, F.S.; revising the continuing education requirements for new licensees and license renewal; authorizing the board to provide by rule the method of delivery of, criteria for, and provisions to carryover hours for continuing education requirements; deleting a requirement that the board approve courses; requiring the board to issue cease and desist orders and enact certain penalties for continuing education providers failing to conform to board rules; requiring the department to establish a system for the administration of continuing education requirements

Florida Senate - 2017 CS for CS for SB 498

590-02719-17 2017498c2

adopted by the board; amending s. 472.025, F.S.; deleting a requirement that registrant seals be of impression-type metal; amending s. 472.0366, F.S.; revising the requirements for copies of evaluation certificates that must be submitted to the Division of Emergency Management within the Executive Office of the Governor; requiring that certain copies of evaluation certificates be retained in the surveyor and mapper's records; amending s. 487.2041, F.S.; requiring the department to adopt by rule certain United States Environmental Protection Agency regulations relating to labeling requirements for pesticides and devices; amending s. 493.6101, F.S.; specifying that a manager of a private investigative agency may manage up to three offices, subject to certain requirements; amending s. 493.6105, F.S.; exempting certain partners and corporate officers from fingerprint retention requirements; revising the submission requirements for applications for Class "K" licenses; amending s. 493.6107, F.S.; deleting a specification that license fees are biennial; amending s. 493.6108, F.S.; providing an authorization to the Department of Law Enforcement to release certain mental health and substance abuse history of Class "G" or Class "K" applicants and licensees for the purpose of determining licensure eligibility; requiring licensees to notify their employer of an arrest within a specified period; amending s. 493.6112, F.S.; revising the notification requirements for changes of

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

certain partners, officers, and employees of private investigative, security, and recovery agencies; amending s. 493.6113, F.S.; specifying that Class "G" licensees must complete requalification training for each type and caliber of firearm carried in the course of performing regulated duties; conforming terminology; amending s. 493.6115, F.S.; conforming a cross-reference; revising the circumstances under which certain licensees may carry a concealed firearm; revising the conditions under which the department may issue a temporary Class "G" license; amending s. 493.6118, F.S.; providing that failure of a licensee to timely notify his or her employer of an arrest is grounds for disciplinary action by the department; requiring the department to temporarily suspend specified licenses of a licensee arrested or formally charged with certain crimes until disposition of the case; requiring the department to notify a licensee of administrative hearing rights; specifying that any hearing must be limited to a determination as to whether the licensee has been arrested or charged with a disqualifying crime; providing that the suspension may be lifted under certain circumstances; requiring the department to proceed with revocation under certain circumstances; amending s. 493.6202, F.S.; deleting a specification that license fees are biennial; amending s. 493.6203, F.S.; deleting a requirement that certain training be provided in two parts; amending s. 493.6302, F.S.; deleting a

specification that license fees are biennial; amending s. 493.6303, F.S.; deleting a requirement that certain training be provided in two parts; deleting obsolete provisions; making technical changes; deleting a provision requiring that if a license is suspended, revoked, or expired for at least 1 year, that the applicant must submit proof of certain training before issuance of a new license; amending s. 493.6304, F.S.; making technical changes; amending s. 493.6402, F.S.; deleting a specification that license fees are biennial; amending s. 493.6403, F.S.; requiring that applicants for Class "E" and "EE" licenses submit proof of successful completion of certain training, rather than just completion of such training; amending s. 501.013, F.S; providing that a program or facility offered by an organization for the exclusive use of its employees and their family members is not subject to certain health studio regulations; amending s. 501.059, F.S.; removing a limitation on the length of time for which the department must place certain persons on a no sales solicitation list; amending s. 507.04, F.S.; making a technical change; amending s. 531.37, F.S.; redefining the term "weights and measures" to exclude taximeters and digital networks; amending s. 531.61, F.S.; deleting certain taximeters from a permitting requirements for commercially operated or tested weights or measures instruments or devices; repealing s. 531.63(2)(g), F.S.; relating to maximum permit fees for taximeters; amending s.

534.021, F.S.; specifying that a detailed drawing, rather than a facsimile, of a brand must accompany an application for the recording of certain marks and brands; amending s. 534.041, F.S.; extending the registration and renewal period for certain mark or brand certificates; eliminating a renewal fee; repealing s. 534.061, F.S., relating to the transfer of ownership of cattle; amending s. 570.07, F.S.; authorizing the department to perform certain food safety inspection services relating to raw agricultural commodities; amending s. 573.118, F.S.; specifying that the Division of Fruit and Vegetables, rather than the Division of Marketing and Development, must file a specified certification; amending s. 590.02, F.S.; specifying that the department has exclusive authority to enforce the Florida Building Code as it relates to Florida Forest Service facilities under the jurisdiction of the department; amending s. 597.004, F.S.; authorizing certain saltwater products dealers to sell certain aquaculture products without restriction under a specified circumstance; amending s. 604.16, F.S.; specifying that dealers in agricultural products who pay by credit card are exempt from certain dealer requirements; amending s. 790.06, F.S.; revising the requirements to obtain a license to carry a concealed weapon or firearm; revising the requirements of the application form; revising the license fees to obtain or renew such license; providing an effective date.

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

Section 1. Subsection (8) of section 288.1175, Florida Statutes, is amended to read:

288.1175 Agriculture education and promotion facility.—

(8) Applications must be postmarked or electronically submitted by October 1 of each year. The Department of Agriculture and Consumer Services may not recommend funding for less than the requested amount to any applicant certified as an agriculture education and promotion facility; however, funding of certified applicants shall be subject to the amount provided by the Legislature in the General Appropriations Act for this program.

Section 2. Paragraph (d) is added to subsection (5) of section 472.003, Florida Statutes, to read:

472.003 Persons not affected by ss. 472.001-472.037.—Sections 472.001-472.037 do not apply to:

(5)

(d) Persons who are under contract with an individual registered or legal entity certified under this chapter and who are under the supervision of and subordinate to a person in responsible charge registered under this chapter, to the extent that such supervision meets standards adopted by rule by the board, if any.

Section 3. Subsections (4) and (10) of section 472.005, Florida Statutes, are amended to read:

472.005 Definitions.—As used in ss. 472.001-472.037:

(4)(a) "Practice of surveying and mapping" means, among

other things, any professional service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence of the act of measuring, locating, establishing, or reestablishing lines, angles, elevations, natural and manmade features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surface of bodies of water, for the purpose of determining, establishing, describing, displaying, or interpreting the facts of size, volume, shape, topography, tidal datum planes, and legal or geodetic location or relocation~~, and orientation of improved or unimproved real property and appurtenances thereto, including acreage and condominiums~~.

(b) The practice of surveying and mapping also includes, but is not limited to, photogrammetric control; orientation of improved or unimproved real property and appurtenances and personal property attached thereto, including acreage and condominiums; the monumentation and remonumentation of property boundaries and subdivisions; the measurement of and preparation of plans showing existing improvements after construction; the layout of proposed improvements; the preparation of descriptions for use in legal instruments of conveyance of real property and property rights; the preparation of subdivision planning maps and record plats, as provided for in chapter 177; the determination of, but not the design of, grades and elevations of roads and land in connection with subdivisions or divisions of land; and the creation and perpetuation of alignments related to maps, record plats, field note records, reports, property

descriptions, and plans and drawings that represent them.

(10) "Subordinate" means a person ~~an employee~~ who performs work under the direction, supervision, and responsible charge of a person who is registered under this chapter.

Section 4. Subsections (2) and (3) of section 472.013, Florida Statutes, are amended to read:

472.013 Examinations, prerequisites.—

(2) An applicant shall be entitled to take the licensure examination to practice in this state as a surveyor and mapper if the applicant is of good moral character and has satisfied one of the following requirements:

(a) The applicant has received a bachelor's degree, its equivalent, or higher in surveying and mapping or a similarly titled program, including, but not limited to, geomatics, geomatics engineering, and land surveying, ~~of 4 years or more in a surveying and mapping degree program~~ from a college or university recognized by the board and has a specific experience record of 4 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. ~~The completed surveying and mapping degree of 4 years or more in a surveying and mapping degree program must have included not fewer than 32 semester hours of study, or its academic equivalent, in the science of surveying and mapping or in board-approved surveying and mapping related courses.~~ Work experience acquired as a part of the education requirement may ~~shall~~ not be construed as experience in responsible charge.

(b) The applicant has received a bachelor's degree, its equivalent, or higher in a ~~is a graduate of a 4-year~~ course of study, other than in surveying and mapping, at an accredited college or university recognized by the board, and has a specific experience record of 6 or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, 5 years of which shall be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. ~~The course of study in disciplines other than surveying and mapping must have included not fewer than 32 semester hours of study or its academic equivalent.~~ The applicant must have completed a minimum of 25 semester hours from a college or university approved by the board in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Any of the required 25 semester hours of study completed not as a part of the bachelor's degree, its equivalent, or higher may ~~4-year course of study shall~~ be approved at the discretion of the board. Work experience acquired as a part of the education requirement may ~~shall~~ not be construed as experience in responsible charge.

(3) A person shall be entitled to take an examination for the purpose of determining whether he or she is qualified ~~to practice in this state~~ as a surveyor and mapper intern if:

(a) The person is in good standing in his or her final year of, or is a graduate of, a 4-year degree program of a college or university and has obtained a minimum of 25 semester hours in

surveying, mapping, mathematics, photogrammetry, forestry, civil engineering, or land law and the physical sciences, or any combination thereof. Any of the required 25 semester hours of study completed not as a part of the 4-year course of study may be approved at the discretion of the board. If the person is in his or her final academic year, a letter of good standing will be required from the advisor; or

(b) The person has completed 2 years of study in a college or university and has obtained a minimum of 15 semester hours in surveying, mapping, mathematics, photogrammetry, forestry, civil engineering, or land law and the physical sciences, or any combination thereof, and has a specific surveying and mapping experience record of 2 or more years as a subordinate to a registered surveyor and mapper. Any of the required 15 semester hours of study completed not as a part of the 2-year course of study may be approved at the discretion of the board.

This subsection may not be construed as a substitute for the degree requirement to take the exams for licensure as outlined in subsection (2) ~~the person is in the final year, or is a graduate, of an approved surveying and mapping curriculum in a school that has been approved by the board~~.

Section 5. Paragraph (a) of subsection (5) and subsection (12) of section 472.015, Florida Statutes, are amended to read:

472.015 Licensure.—

(5)(a) The board shall certify as qualified for a license by endorsement an applicant who, at the time of application:

1. Holds a valid license to practice surveying and mapping issued before ~~prior to~~ July 1, 1999, by another state or

territory of the United States; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 472.013; and has a specific experience record of at least 8 years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, 6 years of which must be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed; or

2. Holds a valid license to practice surveying and mapping issued by another state or territory of the United States if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in Florida at the time the license was issued.~~; or~~

~~3. Is a practicing photogrammetrist who holds the Certified Photogrammetrist designation of the American Society for Photogrammetry and Remote Sensing and held such designation on or before July 1, 2005; is a graduate of a 4-year course of study at an accredited college or university; and has a specific experience record of 6 or more years as a subordinate to a Certified Photogrammetrist of the American Society for Photogrammetry and Remote Sensing in the active practice of surveying and mapping, 5 years of which shall be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The course of study must have included not fewer than 32 semester hours of study or its academic equivalent. The applicant must have completed a minimum of 25 semester hours from a college or university approved by the board in surveying~~

~~and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Any of the required 25 semester hours of study completed not as a part of the 4-year course of study shall be approved at the discretion of the board. Work experience acquired as a part of the education requirement shall not be construed as experience in responsible charge. The applicant must have applied to the department for licensure on or before July 1, 2007.~~

(12) A licensee or business entity that meets the requirements of this section or s. 472.021 must carry professional liability insurance or provide notice to any person or entity to which surveying and mapping services are offered that the licensee or business entity does not carry professional liability insurance. The notice must consist of ~~a sign prominently displayed in the reception area and~~ written statements provided in a form and frequency as required by rule of the Board of Professional Surveyors and Mappers.

Section 6. Section 472.018, Florida Statutes, is amended to read:

472.018 Continuing education.—The department may not renew a license until the licensee submits proof satisfactory to the board that the licensee has met the continuing education requirements for renewal as established by the board and ~~during the 2 years before her or his application for renewal the licensee~~ has completed ~~at least~~ 24 hours of continuing education before license renewal.

(1) The board shall adopt rules to establish the criteria ~~and course content~~ for continuing education providers ~~courses~~.

The rules may provide that up to a maximum of 25 percent of the required continuing education hours may be fulfilled by the performance of pro bono services to the indigent or to underserved populations or in areas of critical need within the state where the licensee practices. The board must require that any pro bono services be approved in advance in order to receive credit for continuing education under this section. The board shall use the standard recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services in determining indigency. The board may adopt rules that may provide that a part of the continuing education hours may be fulfilled by performing research in critical need areas or for training leading to advanced professional certification. The board may adopt rules to define underserved and critical need areas. The department shall adopt rules for the administration of continuing education requirements adopted by the board.

(2) The board may provide by rule the method of delivery and criteria that ~~distance learning~~ may be used to satisfy continuing education requirements. The board may provide by rule provisions for continuing education hours carryover for each license renewal cycle.

(3) The board may prorate the required continuing education hours in the following circumstances:

(a) For new licensees:

1. By requiring half of the required continuing education hours for any applicant who becomes licensed with more than half the renewal period remaining and no continuing education for any applicant who becomes licensed with half or less than half of

the renewal period remaining; or

2. Requiring no continuing education hours until the first full renewal cycle of the licensee.

(b) When the number of hours required is increased by law or the board.

(4) Upon the request of a licensee, the provider must also furnish to the department information regarding courses completed by the licensee, in an electronic format required by rule of the department.

(5) Each continuing education provider shall retain all records relating to a licensee's completion of continuing education courses for at least 4 years after completion of a course.

(6) A continuing education provider may not be approved, and the approval may not be renewed, unless the provider agrees in writing to provide such cooperation under this section as required by the department.

(7) For the purpose of determining which persons or entities must meet the reporting, recordkeeping, and access provisions of this section, the board by rule shall adopt a definition of the term "continuing education provider" applicable to the profession's continuing education requirements. The intent of the rule is to ensure that all records and information necessary to carry out the requirements of this section are maintained and transmitted accordingly and to minimize disputes as to what person or entity is responsible for maintaining and reporting such records and information.

(8) The board shall approve the providers of continuing education. The approval of continuing education providers ~~and~~

~~courses~~ must be for a specified period of time, not to exceed 4 years. An approval that does not include such a time limitation may remain in effect under this chapter or the rules adopted under this chapter.

(9) The department may fine, suspend, or revoke approval of any continuing education provider that fails to comply with its duties under this section. The fine may not exceed $500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted pursuant to s. 472.033.

(10) The board shall issue an order requiring a person or entity to cease and desist from offering any continuing education programs for licensees, and fining, suspending, or revoking any approval of the provider previously granted by the board if the board determines that the person or entity failed to provide appropriate continuing education services that conform to board rules ~~approved course material~~. The fine may not exceed $500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted under s. 472.033.

(11) The board may establish, by rule, a fee not to exceed $250 for anyone seeking approval to provide continuing education courses and may establish, by rule, a biennial fee not to exceed $250 for the renewal of providership of such courses. Such postlicensure education courses are subject to the reporting, monitoring, and compliance provisions of this section.

(12) The department shall establish a system for the administration of continuing education requirements adopted by the board. The department and the board may adopt rules under

ss. 120.536(1) and 120.54 to administer this section.

(13) Each continuing education provider shall provide to the department, in an electronic format determined by the department, information regarding the continuing education status of licensees which the department determines is necessary to carry out its duties under this chapter. After a licensee completes a course, the information must be submitted electronically by the continuing education provider to the department within 30 calendar days after completion. However, beginning on the 30th day before the renewal deadline or before the renewal date, whichever occurs sooner, the continuing education provider shall electronically report such information to the department within 10 business days after completion.

(14) The department shall establish a system to monitor licensee compliance with continuing education requirements and to determine the continuing education status of each licensee. As used in this subsection, the term "monitor" means the act of determining, for each licensee, whether the licensee is in full compliance with applicable continuing education requirements as of the date of the licensee's application for license renewal.

(15) The department may refuse to renew a license until the licensee has satisfied all applicable continuing education requirements. This subsection does not preclude the department or board from imposing additional penalties pursuant to this chapter or rules adopted pursuant this chapter.

Section 7. Subsection (1) of section 472.025, Florida Statutes, is amended to read:

472.025 Seals.—

(1) The board shall adopt, by rule, a form of seal to be

used by all registrants holding valid certificates of registration, whether the registrants are corporations, partnerships, or individuals. Each registrant shall obtain a ~~an impression-type metal~~ seal in that form; and all final drawings, plans, specifications, plats, or reports prepared or issued by the registrant in accordance with the standards of practice established by the board shall be signed by the registrant, dated, and stamped with his or her seal. This signature, date, and seal shall be evidence of the authenticity of that to which they are affixed. Each registrant may in addition register his or her seal electronically in accordance with ss. 668.001-668.006. Drawings, plans, specifications, reports, or documents prepared or issued by a registrant may be transmitted electronically and may be signed by the registrant, dated, and stamped electronically with such seal in accordance with ss. 668.001-668.006.

Section 8. Subsection (2) of section 472.0366, Florida Statutes, is amended to read:

472.0366 Elevation certificates; requirements for surveyors and mappers.—

(2) Beginning January 1, 2017, a surveyor and mapper shall, within 30 days after completion, submit to the division a copy of each elevation certificate that he or she completes. The copy must be unaltered, except that the surveyor and mapper may redact the name of the property owner. The copy need not be signed and sealed when submitted to the division; however, an original signed and sealed copy must be retained in the surveyor and mapper's records as prescribed by rule of the board.

Section 9. Section 487.2041, Florida Statutes, is amended

to read:

487.2041 Enforcement of federal worker protection regulations.—The department shall, to the extent that resources are available, continue to operate under the United States Environmental Protection Agency regulations regarding the Labeling Requirement for Pesticides and Devices, 40 C.F.R. part 156, and the Worker Protection Standard, 40 C.F.R. part 170, which the department shall adopt ~~adopted~~ by rule ~~during the 1995-1996 fiscal year and published in the Florida Administrative Code~~. Any provision of this part not preempted by federal law shall continue to apply.

Section 10. Subsection (13) of section 493.6101, Florida Statutes, is amended to read:

493.6101 Definitions.—

(13) "Manager" means any licensee who directs the activities of licensees at any agency or branch office. The manager shall be assigned to and shall primarily operate from the agency or branch office location for which he or she has been designated as manager. The manager of a private investigative agency may, however, manage up to three offices within a 150-mile radius of the location listed on the agency's Class "A" license, provided that these three offices consist of either:

(a) The location listed on the agency's Class "A" license and up two branch offices; or

(b) Up to three branch offices.

Section 11. Paragraph (j) of subsection (3) and paragraph (a) of subsection (6) of section 493.6105, Florida Statutes, are amended to read:

493.6105 Initial application for license.—

(3) The application must contain the following information concerning the individual signing the application:

(j) A full set of fingerprints, a fingerprint processing fee, and a fingerprint retention fee. The fingerprint processing and retention fees shall be established by rule of the department based upon costs determined by state and federal agency charges and department processing costs, which must include the cost of retaining the fingerprints in the statewide automated biometric identification system established in s. 943.05(2)(b) and the cost of enrolling the fingerprints in the national retained print arrest notification program as required under s. 493.6108. An applicant who has, within the immediately preceding 6 months, submitted such fingerprints and fees for licensing purposes under this chapter and who still holds a valid license is not required to submit another set of fingerprints or another fingerprint processing fee. An applicant who holds multiple licenses issued under this chapter is required to pay only a single fingerprint retention fee. Partners and corporate officers who do not possess licenses subject to renewal under s. 493.6113 are exempt from the fingerprint retention requirements of this chapter.

(6) In addition to the requirements under subsection (3), an applicant for a Class "K" license must:

(a) Submit one of the following:

1. The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification.

2. A valid ~~The~~ National Rifle Association Private Security Firearm Instructor Certificate issued not more than 3 years before the submission of the applicant's Class "K" application.

3. A valid firearms instructor certificate issued by a federal law enforcement agency not more than 3 years before the submission of the applicant's Class "K" application.

Section 12. Subsection (1) of section 493.6107, Florida Statutes, is amended to read:

493.6107 Fees.—

(1) The department shall establish by rule examination and ~~biennial~~ license fees, ~~which shall~~ not to exceed the following:

(a) Class "M" license—manager Class "AB" agency: $75.

(b) Class "G" license—statewide firearm license: $150.

(c) Class "K" license—firearms instructor: $100.

(d) Fee for the examination for firearms instructor: $75.

Section 13. Subsections (3) and (5) of section 493.6108, Florida Statutes, are amended to read:

493.6108 Investigation of applicants by Department of Agriculture and Consumer Services.—

(3) The department must also investigate the mental history and current mental and emotional fitness of any Class "G" or Class "K" applicant and may deny a Class "G" or Class "K" license to anyone who has a history of mental illness or drug or alcohol abuse. Notwithstanding s. 790.065(2)(a)4.f., the Department of Law Enforcement may, for the limited purpose of determining eligibility of Class "G" or Class "K" applicants and licensees under this chapter, provide the department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm.

(5) A person licensed under this chapter must notify his or her employer within 3 calendar days if he or she is arrested for any offense. If the department receives information about an arrest within the state of a person who holds a valid license issued under this chapter for a crime that could potentially disqualify the person from holding such a license, the department must provide the arrest information to the agency that employs the licensee.

Section 14. Section 493.6112, Florida Statutes, is amended to read:

493.6112 Notification to Department of Agriculture and Consumer Services of changes of partner or officer or employees.—

(1) After filing the application, unless the department declines to issue the license or revokes it after issuance, an agency ~~or school~~ shall, within 5 working days of the withdrawal, removal, replacement, or addition of any or all partners or officers, notify and file with the department complete applications for such individuals. The agency's ~~or school's~~ good standing under this chapter shall be contingent upon the department's approval of any new partner or officer.

(2) Each agency ~~or school~~ shall, upon the employment or termination of employment of a licensee, report such employment or termination within 15 calendar days ~~immediately~~ to the department and, in the case of a termination, report the reason or reasons therefor. The report shall be submitted electronically in a manner ~~on a form~~ prescribed by the department.

Section 15. Paragraph (b) of subsection (3) of section

493.6113, Florida Statutes, is amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the renewal fee and the fingerprint retention fee to cover the cost of ongoing retention in the statewide automated biometric identification system established in s. 943.05(2)(b). Upon the first renewal of a license issued under this chapter before January 1, 2017, the licensee shall submit a full set of fingerprints and fingerprint processing fees to cover the cost of entering the fingerprints into the statewide automated biometric identification system pursuant to s. 493.6108(4)(a) and the cost of enrollment in the Federal Bureau of Investigation's national retained print arrest notification program. Subsequent renewals may be completed without submission of a new set of fingerprints.

(b) Each Class "G" licensee shall additionally submit proof that he or she has received during each year of the license period a minimum of 4 hours of firearms requalification ~~recertification~~ training taught by a Class "K" licensee and has complied with such other health and training requirements that the department shall adopt by rule. Proof of completion of firearms requalification ~~recertification~~ training shall be submitted to the department upon completion of the training. A Class "G" licensee must successfully complete this requalification training for each type and caliber of firearm carried in the course of performing his or her regulated duties. If the licensee fails to complete the required 4 hours of annual

training during the first year of the 2-year term of the license, the license shall be automatically suspended. The licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be reinstated. If the licensee fails to complete the required 4 hours of annual training during the second year of the 2-year term of the license, the licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be renewed. The department may waive the firearms training requirement if:

1. The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;

2. The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous 2 years of the licensure period; or

3. The applicant submits a valid firearm certificate among those specified in s. 493.6105(6)(a) and provides proof of having completed requalification training during the previous 2 years of the licensure period.

Section 16. Subsection (4) of section 493.6115, Florida Statutes, is amended, present paragraphs (b), (c), and (d) of

subsection (12) of that section are redesignated as paragraphs (c), (d), and (e), respectively, and a new paragraph (b) is added to that subsection, to read:

493.6115 Weapons and firearms.—

(4) A Class "C" or Class "CC" licensee who is 21 years of age or older and ~~who~~ has also been issued a Class "G" license may carry, in the performance of her or his duties, a concealed firearm. A Class "D" licensee who is 21 years of age or older and ~~who~~ has also been issued a Class "G" license may carry a concealed firearm in the performance of her or his duties under the conditions specified in s. 493.6305(3) or (4) ~~493.6305(2)~~. The Class "G" license must ~~shall~~ clearly indicate such authority. The authority of any such licensee to carry a concealed firearm is ~~shall be~~ valid in any location throughout the state~~, in any location,~~ while performing services within the scope of the license.

(12) The department may issue a temporary Class "G" license, on a case-by-case basis, if:

(b) The department has reviewed the mental health and substance abuse data provided by the Department of Law Enforcement as authorized in s. 493.6108(3) and has determined the applicant is not prohibited from licensure based upon this data.

Section 17. Subsection (1) of section 493.6118, Florida Statutes, is amended, and subsections (8) and (9) are added to that section, to read:

493.6118 Grounds for disciplinary action.—

(1) The following constitute grounds for which disciplinary action specified in subsection (2) may be taken by the

department against any licensee, agency, or applicant regulated by this chapter, or any unlicensed person engaged in activities regulated under this chapter:~~.~~

(a) Fraud or willful misrepresentation in applying for or obtaining a license.

(b) Use of any fictitious or assumed name by an agency unless the agency has department approval and qualifies under s. 865.09.

(c) Being found guilty of or entering a plea of guilty or nolo contendere to, regardless of adjudication, or being convicted of a crime that directly relates to the business for which the license is held or sought. A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying criminal charges, and the department shall allow the individual being disciplined or denied an application for a license to present any mitigating circumstances surrounding his or her plea.

(d) A false statement by the licensee that any individual is or has been in his or her employ.

(e) A finding that the licensee or any employee is guilty of willful betrayal of a professional secret or any unauthorized release of information acquired as a result of activities regulated under this chapter.

(f) Proof that the applicant or licensee is guilty of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of the activities regulated under this chapter.

(g) Conducting activities regulated under this chapter without a license or with a revoked or suspended license.

(h) Failure of the licensee to maintain in full force and

effect the commercial general liability insurance coverage required by s. 493.6110.

(i) Impersonating, or permitting or aiding and abetting an employee to impersonate, a law enforcement officer or an employee of the state, the United States, or any political subdivision thereof by identifying himself or herself as a federal, state, county, or municipal law enforcement officer or official representative, by wearing a uniform or presenting or displaying a badge or credentials that would cause a reasonable person to believe that he or she is a law enforcement officer or that he or she has official authority, by displaying any flashing or warning vehicular lights other than amber colored, or by committing any act that is intended to falsely convey official status.

(j) Commission of an act of violence or the use of force on any person except in the lawful protection of one’s self or another from physical harm.

(k) Knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, capias, warrant, injunction, or cease and desist order, in the course of business regulated under this chapter.

(l) Soliciting business for an attorney in return for compensation.

(m) Transferring or attempting to transfer a license issued pursuant to this chapter.

(n) Employing or contracting with any unlicensed or improperly licensed person or agency to conduct activities regulated under this chapter, or performing any act that assists, aids, or abets a person or business entity in engaging

in unlicensed activity, when the licensure status was known or could have been ascertained by reasonable inquiry.

(o) Failure or refusal to cooperate with or refusal of access to an authorized representative of the department engaged in an official investigation pursuant to this chapter.

(p) Failure of any partner, principal corporate officer, or licensee to have his or her identification card in his or her possession while on duty.

(q) Failure of any licensee to have his or her license in his or her possession while on duty, as specified in s. 493.6111(1).

(r) Failure or refusal by a sponsor to certify a biannual written report on an intern or to certify completion or termination of an internship to the department within 15 working days.

(s) Failure to report to the department any person whom the licensee knows to be in violation of this chapter or the rules of the department.

(t) Violating any provision of this chapter.

(u) For a Class "G" licensee, failing to timely complete requalification ~~recertification~~ training as required in s. 493.6113(3)(b).

(v) For a Class "K" licensee, failing to maintain active certification specified under s. 493.6105(6).

(w) For a Class "G" or a Class "K" applicant or licensee, being prohibited from purchasing or possessing a firearm by state or federal law.

(x) In addition to the grounds for disciplinary action prescribed in paragraphs (a)-(t), Class "R" recovery agencies,

Class "E" recovery agents, and Class "EE" recovery agent interns are prohibited from committing the following acts:

1. Recovering a motor vehicle, mobile home, motorboat, aircraft, personal watercraft, all-terrain vehicle, farm equipment, or industrial equipment that has been sold under a conditional sales agreement or under the terms of a chattel mortgage before authorization has been received from the legal owner or mortgagee.

2. Charging for expenses not actually incurred in connection with the recovery, transportation, storage, or disposal of repossessed property or personal property obtained in a repossession.

3. Using any repossessed property or personal property obtained in a repossession for the personal benefit of a licensee or an officer, director, partner, manager, or employee of a licensee.

4. Selling property recovered under the provisions of this chapter, except with written authorization from the legal owner or the mortgagee thereof.

5. Failing to notify the police or sheriff's department of the jurisdiction in which the repossessed property is recovered within 2 hours after recovery.

6. Failing to remit moneys collected in lieu of recovery of a motor vehicle, mobile home, motorboat, aircraft, personal watercraft, all-terrain vehicle, farm equipment, or industrial equipment to the client within 10 working days.

7. Failing to deliver to the client a negotiable instrument that is payable to the client, within 10 working days after receipt of such instrument.

8. Falsifying, altering, or failing to maintain any required inventory or records regarding disposal of personal property contained in or on repossessed property pursuant to s. 493.6404(1).

9. Carrying any weapon or firearm when he or she is on private property and performing duties under his or her license whether or not he or she is licensed pursuant to s. 790.06.

10. Soliciting from the legal owner the recovery of property subject to repossession after such property has been seen or located on public or private property if the amount charged or requested for such recovery is more than the amount normally charged for such a recovery.

11. Wearing, presenting, or displaying a badge in the course of performing a repossession regulated by this chapter.

(y) Installation of a tracking device or tracking application in violation of s. 934.425.

(z) Failure of any licensee to notify his or her employer within 3 calendar days if he or she is arrested for any offense.

(8)(a) Upon notification by a law enforcement agency, a court, or the Department of Law Enforcement and upon subsequent written verification, the department shall temporarily suspend a Class "G" or Class "K" license if the licensee is arrested or charged with a firearms-related crime that would disqualify such person from licensure under this chapter. The department shall notify the licensee suspended under this section of his or her right to a hearing pursuant to chapter 120. A hearing conducted regarding this temporary suspension must be for the limited purpose of determining whether the licensee has been arrested or charged with a disqualifying firearms-related crime.

(b) If the criminal case results in a nondisqualifying disposition, the department shall issue an order lifting the suspension upon the licensee's submission of a certified copy of the final resolution.

(c) If the criminal case results in a disqualifying disposition, the suspension remains in effect and the department shall proceed with revocation proceedings pursuant to chapter 120.

(9)(a) Upon notification by a law enforcement agency, a court, or the Department of Law Enforcement and upon subsequent written verification, the department shall temporarily suspend a license if the licensee is arrested or charged with a forcible felony as defined in s. 776.08. The department shall notify the licensee suspended under this section of his or her right to a hearing pursuant to chapter 120. A hearing conducted regarding this temporary suspension must be for the limited purpose of determining whether the licensee has been arrested or charged with a forcible felony.

(b) If the criminal case results in a nondisqualifying disposition, the department shall issue an order lifting the suspension upon the licensee's submission to the department of a certified copy of the final resolution.

(c) If criminal case results in a disqualifying disposition, the suspension remains in effect and the department shall proceed with revocation proceedings pursuant to chapter 120.

Section 18. Subsection (1) of section 493.6202, Florida Statutes, is amended to read:

493.6202 Fees.—

(1) The department shall establish by rule examination and ~~biennial~~ license fees, ~~which shall~~ not to exceed the following:

(a) Class "A" license—private investigative agency: $450.

(b) Class "AA" or "AB" license—branch office: $125.

(c) Class "MA" license—private investigative agency manager: $75.

(d) Class "C" license—private investigator: $75.

(e) Class "CC" license—private investigator intern: $60.

Section 19. Subsection (5) and paragraphs (b) and (c) of subsection (6) of section 493.6203, Florida Statutes, are amended to read:

493.6203 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency shall comply with the following additional requirements:

(5) ~~Effective January 1, 2008,~~ An applicant for a Class "MA," Class "M," or Class "C" license must pass an examination that covers the provisions of this chapter and is administered by the department or by a provider approved by the department. The applicant must pass the examination before applying for licensure and must submit proof with the license application on a form approved by rule of the department that he or she has passed the examination. The administrator of the examination shall verify the identity of each applicant taking the examination.

(a) The examination requirement in this subsection does not apply to an individual who holds a valid Class "CC," Class "C," Class "MA," or Class "M" license.

(b) Notwithstanding the exemption provided in paragraph

(a), if the license of an applicant for relicensure has been invalid for more than 1 year, the applicant must take and pass the examination.

(c) The department shall establish by rule the content of the examination, the manner and procedure of its administration, and an examination fee that may not exceed $100.

(6)

(b) ~~Effective January 1, 2012,~~ Before submission of an application to the department, the applicant for a Class "CC" license must have completed a minimum of 40 hours of professional training pertaining to general investigative techniques and this chapter, which course is offered by a state university or by a school, community college, college, or university under the purview of the Department of Education, and the applicant must pass an examination. ~~The training must be provided in two parts, one 24-hour course and one 16-hour course.~~ The certificate evidencing satisfactory completion of the 40 hours of professional training must be submitted with the application for a Class "CC" license. The training specified in this paragraph may be provided by face-to-face presentation, online technology, or a home study course in accordance with rules and procedures of the Department of Education. The administrator of the examination must verify the identity of each applicant taking the examination.

1. Upon an applicant's successful completion of each part of the approved training and passage of any required examination, the school, community college, college, or university shall issue a certificate of completion to the applicant. The certificates must be on a form established by

rule of the department.

2. The department shall establish by rule the general content of the professional training and the examination criteria.

3. If the license of an applicant for relicensure is invalid for more than 1 year, the applicant must complete the required training and pass any required examination.

(c) ~~An individual who submits an application for a Class "CC" license on or after September 1, 2008, through December 31, 2011, who has not completed the 16-hour course must submit proof of successful completion of the course within 180 days after the date the application is submitted. If documentation of completion of the required training is not submitted by that date, the individual's license shall be automatically suspended until proof of the required training is submitted to the department.~~ An individual licensed on or before August 31, 2008, is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was licensed applies.

Section 20. Subsection (1) of section 493.6302, Florida Statutes, is amended to read:

493.6302 Fees.—

(1) The department shall establish by rule ~~biennial~~ license fees, ~~which shall~~ not to exceed the following:

(a) Class "B" license—security agency: $450.

(b) Class "BB" or Class "AB" license—branch office: $125.

(c) Class "MB" license—security agency manager: $75.

(d) Class "D" license—security officer: $45.

(e) Class "DS" license—security officer school or training facility: $60.

(f) Class "DI" license—security officer school or training facility instructor: $60.

Section 21. Subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency must comply with the following additional requirements:

(4) ~~(a) Effective January 1, 2012,~~ An applicant for a Class "D" license must submit proof of successful completion of a minimum of 40 hours of professional training at a school or training facility licensed by the department. ~~The training must be provided in two parts, one 24-hour course and one 16-hour course.~~ The department shall by rule establish the general content and number of hours of each subject area to be taught.

~~(b) An individual who submits an application for a Class "D" license on or after January 1, 2007, through December 31, 2011, who has not completed the 16-hour course must submit proof of successful completion of the course within 180 days after the date the application is submitted. If documentation of completion of the required training is not submitted by that date, the individual's license shall be automatically suspended until proof of the required training is submitted to the department. A person licensed before January 1, 2007, is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was~~

~~licensed applies.~~

~~(c) An individual whose license is suspended or revoked pursuant to paragraph (b), or is expired for at least 1 year, is considered, upon reapplication for a license, an initial applicant and must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department as provided in paragraph (a) before a license is issued.~~

Section 22. Subsection (1) of section 493.6304, Florida Statutes, is amended to read:

493.6304 Security officer school or training facility.—

(1) Any school, training facility, or instructor who offers the training specified ~~outlined~~ in s. 493.6303(4) for Class "D" applicants shall, before licensure of such school, training facility, or instructor, file with the department an application accompanied by an application fee in an amount to be determined by rule, not to exceed $60. The fee is ~~shall~~ not ~~be~~ refundable.

Section 23. Subsection (1) of section 493.6402, Florida Statutes, is amended to read:

493.6402 Fees.—

(1) The department shall establish by rule ~~biennial~~ license fees~~, that shall~~ not to exceed the following:

(a) Class "R" license—recovery agency: $450.

(b) Class "RR" license—branch office: $125.

(c) Class "MR" license—recovery agency manager: $75.

(d) Class "E" license—recovery agent: $75.

(e) Class "EE" license—recovery agent intern: $60.

(f) Class "RS" license—recovery agent school or training facility: $60.

(g) Class "RI" license—recovery agent school or training facility instructor: $60.

Section 24. Subsection (2) of section 493.6403, Florida Statutes, is amended to read:

493.6403 License requirements.—

(2) ~~Beginning October 1, 1994,~~ An applicant for a Class "E" or a Class "EE" license must submit proof of successful completion ~~have completed a minimum~~ of 40 hours of professional training at a school or training facility licensed by the department. The department shall by rule establish the general content for the training.

Section 25. Subsection (6) is added to section 501.013, Florida Statutes, to read:

501.013 Health studios; exemptions.—The following businesses or activities may be declared exempt from the provisions of ss. 501.012-501.019 upon the filing of an affidavit with the department establishing that the stated qualifications are met:

(6) A program or facility offered by an organization for the exclusive use of its employees and their family members.

Section 26. Paragraph (a) of subsection (3) of section 501.059, Florida Statutes, is amended to read:

501.059 Telephone solicitation.—

(3)(a) If any residential, mobile, or telephonic paging device telephone subscriber notifies the department of his or her desire to be placed on a "no sales solicitation calls" listing indicating that the subscriber does not wish to receive unsolicited telephonic sales calls, the department shall place the subscriber on that listing ~~for 5 years~~.

Section 27. Paragraph (a) of subsection (1) and subsection (3) of section 507.04, Florida Statutes, are amended to read:

507.04 Required insurance coverages; liability limitations; valuation coverage.—

(1) LIABILITY INSURANCE.—

(a)1. Except as provided in paragraph (b), each mover operating in this state must maintain current and valid liability insurance coverage of at least $10,000 per shipment for the loss or damage of household goods resulting from the negligence of the mover or its employees or agents.

2. The mover must provide the department with evidence of liability insurance coverage before the mover is registered with the department under s. 507.03. All insurance coverage maintained by a mover must remain in effect throughout the mover's registration period. A mover's failure to maintain insurance coverage in accordance with this paragraph constitutes an immediate threat to the public health, safety, and welfare. ~~If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this paragraph, a civil penalty not to exceed $5,000, and court costs.~~

(3) INSURANCE COVERAGES.—The insurance coverages required under paragraph (1)(a) and subsection (2) must be issued by an insurance company or carrier licensed to transact business in

this state under the Florida Insurance Code as designated in s. 624.01. The department shall require a mover to present a certificate of insurance of the required coverages before issuance or renewal of a registration certificate under s. 507.03. The department shall be named as a certificateholder in the certificate and must be notified at least 10 days before cancellation of insurance coverage. If a mover fails to maintain insurance coverage, the department may immediately suspend the mover's registration or eligibility for registration, and the mover must immediately cease operating as a mover in this state. In addition, and notwithstanding the availability of any administrative relief pursuant to chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the mover from operating in this state until the mover complies with this section, a civil penalty not to exceed $5,000, and court costs.

Section 28. Subsection (1) of section 531.37, Florida Statutes, is amended to read:

531.37 Definitions.—As used in this chapter:

(1) "Weights and measures" means 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, excluding taximeters, digital networks, and those weights and measures used for the purpose of inspecting the accuracy of devices used in conjunction with aviation fuel.

Section 29. Section 531.61, Florida Statutes, is amended to read:

531.61 Exemptions from permit requirement.—Commercial

weights or measures instruments or devices are exempt from the requirements of ss. 531.60-531.66 if:

(1) ~~The device is a taximeter that is licensed, permitted, or registered by a municipality, county, or other local government and is tested for accuracy and compliance with state standards by the local government in cooperation with the state as authorized in s. 531.421.~~

~~(2)~~ The device is used exclusively for weighing railroad cars and is tested for accuracy and compliance with state standards by a private testing agency.

(2)~~(3)~~ The device is used exclusively for measuring aviation fuel or petroleum products inspected under chapter 525.

Section 30. Paragraph (g) of subsection (2) of section 531.63, Florida Statutes, is repealed.

Section 31. Section 534.021, Florida Statutes, is amended to read:

534.021 Recording of marks or brands.—The department shall be the recorder of livestock marks or brands, and the marks or brands may not be recorded elsewhere in the state. Any livestock owner who uses a mark or brand to identify her or his livestock must register the mark or brand by applying to the department. The application must be made on a form prescribed by the department and must be accompanied by a detailed drawing ~~facsimile~~ of the brand applied for and a statement identifying the county in which the applicant has or expects to have livestock bearing the mark or brand to be recorded. The department shall, upon its satisfaction that the application meets the requirements of this chapter, record the mark or brand for exclusive statewide use by the applicant. If an application

is made to record a mark or brand previously recorded, the department shall determine whether the county in which the mark or brand will be used is near enough to another county in which the previously recorded mark or brand is used to cause confusion or to aid theft or dishonesty, and if so, the department must decline to admit to record the mark or brand. If a conflict arises between the owner of any recorded mark or brand and another claiming the right to record the same mark or brand, the department must give preference to the present owner. The department shall charge and collect at the time of recording a fee of $10 for each mark or brand. A person may not use any mark or brand to which another has a prior right of record. It is unlawful to brand any animal with a brand not registered with the department.

Section 32. Section 534.041, Florida Statutes, is amended to read:

534.041 Renewal of certificate of mark or brand.—The registration of a mark or brand entitles the registered owner to exclusive ownership and use of the mark or brand for a period ending at midnight on the last day of the month 10 ~~5~~ years from the date of registration. Upon application, registration may be renewed~~, upon application and payment of a renewal fee of $5,~~ for successive 10-year ~~5-year~~ periods, each ending at midnight on the last day of the month 10 ~~5~~ years from the date of renewal. At least 60 days before ~~prior to~~ the expiration of a registration, the department shall notify by letter the registered owner of the mark or brand that, upon application for renewal and payment of the renewal fee, the department will issue a renewal certificate granting the registered owner

exclusive ownership and use of the mark or brand for another 10-year ~~5-year~~ period ending at midnight on the last day of the month 10 ~~5~~ years from the date of renewal. Failure to make application for renewal within the month of expiration of a registration will cause the department to send a second notice to the registered owner by mail at her or his last known address. Failure of the registered owner to make application for renewal within 30 days after receipt of the second notice will cause the owner's mark or brand to be placed on an inactive list for a period of 12 months, after which it will be canceled and become subject to registration by another person.

Section 33. Section 534.061, Florida Statutes, is repealed.

Section 34. Subsection (45) is added to section 570.07, Florida Statutes, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(45) To perform food safety inspection services where raw agricultural commodities are grown, produced, harvested, held, packed, or repacked.

Section 35. Subsection (1) of section 573.118, Florida Statutes, is amended to read:

573.118 Assessment; funds; review of accounts; loans.—

(1) To provide funds to defray the necessary expenses incurred by the department in the formulation, issuance, administration, and enforcement of any marketing order, every person engaged in the production, distributing, or handling of agricultural commodities within this state, and directly affected by any marketing order, shall pay to the department, at

such times and in such installments as the department may prescribe, such person's pro rata share of necessary expenses. Each person's share of expenses shall be that proportion which the total volume of agricultural commodities produced, distributed, or handled by the person during the current marketing season, or part thereof covered by such marketing order, is of the total volume of the commodities produced, distributed, or handled by all such persons during the same current marketing season or part thereof. The department, after receiving the recommendations of the advisory council, shall fix the rate of assessment on the volume of agricultural commodities sold or some other equitable basis. For convenience of collection, upon request of the department, handlers of the commodities shall pay any producer assessments. Handlers paying assessments for and on behalf of any producers may collect the producer assessments from any moneys owed by the handlers to the producers. The collected assessments shall be deposited into the appropriate trust fund and used for the sole purpose of implementing the marketing order for which the assessment was collected. The department is not subject to s. 287.057 in the expenditure of these funds. However, the director of the Division of Fruit and Vegetables ~~Marketing and Development~~ shall file with the internal auditor of the department a certification of conditions and circumstances justifying each contract or agreement entered into without competitive bidding.

Section 36. Paragraph (b) of subsection (4) of section 590.02, Florida Statutes, is amended to read:

590.02 Florida Forest Service; powers, authority, and duties; liability; building structures; Withlacoochee Training

Center.—

(4)

(b) Notwithstanding s. 553.80(1), the department shall exclusively enforce the Florida Building Code as it pertains to wildfire, ~~and~~ law enforcement, and other Florida Forest Service facilities under the jurisdiction of the department.

Section 37. Paragraph (a) of subsection (5) of section 597.004, Florida Statutes, is amended to read:

597.004 Aquaculture certificate of registration.—

(5) SALE OF AQUACULTURE PRODUCTS.—

(a) Aquaculture products, except shellfish, snook, and any fish of the genus *Micropterus*, and prohibited and restricted freshwater and marine species identified by rules of the Fish and Wildlife Conservation Commission, may be sold by an aquaculture producer certified pursuant to this section or by a dealer licensed pursuant to part VII of chapter 379 without restriction so long as the product origin can be identified.

Section 38. Subsection (2) of section 604.16, Florida Statutes, is amended to read:

604.16 Exceptions to provisions of ss. 604.15-604.34.—Except for s. 604.22(2), the provisions of ss. 604.15-604.34 do not apply to:

(2) A dealer in agricultural products who pays at the time of purchase with United States cash currency or a cash equivalent, such as a money order, cashier's check, wire transfer, electronic funds transfer, or PIN-based debit transaction, or who pays with a credit card as defined in s. 658.995(2)(a).

Section 39. Subsections (2) and (4), and paragraph (b) of

subsection (5) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(2) The Department of Agriculture and Consumer Services shall issue a license if the applicant:

(a) Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;

(b) Is 21 years of age or older;

(c) Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;

(d) Is not ineligible to possess a firearm pursuant to s. 790.23 by virtue of having been convicted of a felony;

(e) Has not been: ~~committed for the abuse of a controlled substance or been~~

1. Found guilty of a crime under the provisions of chapter 893 or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted; or

2. Committed for the abuse of a controlled substance under chapter 397 or under the provisions of former chapter 396 or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state where the

commitment occurred is deemed not to be committed for the abuse of a controlled substance under this subparagraph;

(f) Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been ~~committed under chapter 397 or under the provisions of former chapter 396 or has been~~ convicted under s. 790.151 or has been deemed a habitual offender under s. 856.011(3), or has had two or more convictions under s. 316.193 or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;

(g) Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;

(h) Demonstrates competence with a firearm by any one of the following:

1. Completion of any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;

2. Completion of any National Rifle Association firearms safety or training course;

3. Completion of any firearms safety or training course or class available to the general public offered by a law enforcement agency, junior college, college, or private or public institution or organization or firearms training school, using instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the

Department of Agriculture and Consumer Services;

4. Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement agency or security enforcement;

5. Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;

6. Is licensed or has been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or

7. Completion of any firearms training or safety course or class conducted by a state-certified or National Rifle Association certified firearms instructor;

A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document that shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this paragraph. A person who conducts a course pursuant to subparagraph 2., subparagraph 3., or subparagraph 7., or who, as an instructor, attests to the completion of such courses, must maintain records certifying that he or she observed the student safely handle and discharge the firearm in his or her physical presence and that the discharge of the firearm included live fire using a firearm and ammunition as defined in s. 790.001;

(i) Has not been adjudicated an incapacitated person under s. 744.331, or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state where the adjudication occurred is deemed not to have been adjudicated an incapacitated person under this paragraph~~, unless 5 years have elapsed since the applicant's restoration to capacity by court order~~;

(j) Has not been committed to a mental institution under chapter 394, or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state where the commitment occurred is deemed not to have been committed in a mental institution under this paragraph~~, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years before the date of submission of the application~~;

(k) Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;

(l) Has not had adjudication of guilt withheld or imposition of sentence suspended on any misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;

(m) Has not been issued an injunction that is currently in force and effect and that restrains the applicant from

committing acts of domestic violence or acts of repeat violence; and

(n) Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

(4) The application shall be completed, under oath, on a form adopted by the Department of Agriculture and Consumer Services and shall include:

(a) The name, address, place of birth, date of birth, and race of the applicant;

(b) A statement that the applicant is in compliance with criteria contained within subsections (2) and (3);

(c) A statement that the applicant has been furnished a copy of or a website link to this chapter and is knowledgeable of its provisions;

(d) A conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal prosecution under s. 837.06;

(e) A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense; and

(f) Directions for an applicant who is a servicemember, as defined in s. 250.01, or a veteran, as defined in s. 1.01, to request expedited processing of his or her application.

(5) The applicant shall submit to the Department of Agriculture and Consumer Services or an approved tax collector pursuant to s. 790.0625:

(b) A nonrefundable license fee of up to $55 ~~$60~~ if he or she has not previously been issued a statewide license or of up

to $45 ~~$50~~ for renewal of a statewide license. The cost of processing fingerprints as required in paragraph (c) shall be borne by the applicant. However, an individual holding an active certification from the Criminal Justice Standards and Training Commission as a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9) is exempt from the licensing requirements of this section. If such individual wishes to receive a concealed weapon or firearm license, he or she is exempt from the background investigation and all background investigation fees but must pay the current license fees regularly required to be paid by nonexempt applicants. Further, a law enforcement officer, a correctional officer, or a correctional probation officer as defined in s. 943.10(1), (2), or (3) is exempt from the required fees and background investigation for 1 year after his or her retirement.

Section 40. This 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)

4/25/17
Meeting Date

498
Bill Number (if applicable)

434084
Amendment Barcode (if applicable)

Topic DOACS CONSUMER PROTECTION BILL

Name DAVID DANIEL

Job Title

Address 311 EAST PARK AVENUE
Street

Phone 224-5081

TALLAHASSEE FL 32301
City *State* *Zip*

Email ddan.dl@smithbryan.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA SURVEYING AND MAPPING SOCIETY

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)

4/25/17
Meeting Date

498
Bill Number (if applicable)

Topic Taximeters / Dept of Ag

Amendment Barcode (if applicable)

Name Rana Brown

Job Title

Address 104 W Jefferson St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 224 3427

Email Rana@RLBobPA.com

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

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

Representing Fla Taxicab Assoc.

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

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

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

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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)

4-25-2017
Meeting Date

Topic FDACS dept. bill

Bill Number 498 *(if applicable)*

Name GRACE LOVETT

Amendment Barcode *(if applicable)*

Job Title Dir. Legislative Affairs

Address PL 10 The Capitol
Street
Tallahassee FL 32399
City *State* *Zip*

Phone 850 617 7700

E-mail grace.lovett@freshfromflorida.com

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

Representing FL Dept. of Agriculture & Consumer Services

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

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

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

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S-001 (10/20/11)

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 512
INTRODUCER:	Regulated Industries Committee and Senator Young and others
SUBJECT:	Steroid Use in Racing Greyhounds
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	**Fav/CS**
2.	Kraemer	Phelps	RC	**Favorable**
3.	Davis	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 512 amends section 550.2415, Florida Statutes, to provide that a positive test result for anabolic steroids[1] in a racing greyhound based on samples taken from the greyhound before or after a race is a violation of law. Currently, s. 550.2415, F.S., prohibits racing of an animal that has been impermissibly medicated or determined to have a prohibited substance present in urine or other samples taken from the animal before or immediately after a race. Under current law, testosterone, an anabolic steroid, is permitted to be used for the control of the reproductive cycle in female greyhounds.

The bill has an indeterminate fiscal impact on state revenues and expenditures. *See* Section V. Fiscal Impact Statement.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

The racing of an animal (horse or greyhound) that has been impermissibly medicated or determined to have a prohibited substance present, is a violation of s. 550.2415, F.S. However, the Division of Pari-mutuel Wagering (division) of the Department of Business and Professional

[1] Steroids include drugs used to relieve swelling and inflammation, such as prednisone and cortisone; vitamin D; and some sex hormones, such as testosterone and estradiol. *See* http://www.medicinenet.com/script/main/art.asp?articlekey=5556 (last visited Mar. 31, 2017).

Regulation (DBPR) may adopt rules specifying acceptable levels of naturally occurring substances in untreated animals, acceptable levels of environmental contaminants, and trace levels of substances in test samples.[2]

Classification of a substance in a sample as permissible or impermissible may be dependent upon whether:

- The substance is administered within or outside the allowed time frame before a race is scheduled to begin;
- The racing animal is approved for administration of the substance, or is qualified by gender to receive it;
- The level of the substance exceeds acceptable levels set by administrative rule; and
- The method of administration of the substance is prohibited.[3]

Certain medications may be administered to racing greyhounds in certain dosages under limited conditions, including the administration of:

- Testosterone or testosterone-like substances, when used for the control of estrus in female racing greyhounds, is permitted, subject to certain conditions;[4] and
- Sulfa drugs (antibiotics)[5] under certain conditions.[6]

Certain medications at certain urinary concentrations are not reportable by the state laboratory as violations.[7]

All prescription medication, regardless of method of administration, shall be safeguarded under lock and key when not being actively administered.[8]

Each racetrack permitholder must maintain a detention enclosure for securing urine, blood, or other samples from racing animals.[9] The trainer of record for each animal is responsible for the

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[2] *See* s. 550.2415(1)(b), F.S. and Rule 61D-6.007, F.A.C.
[3] *See* Rule 61D-6.007, F.A.C.
[4] Pursuant to Rule 61D-6.007, F.A.C., track veterinarians may administer injectable testosterone to female racing greyhounds to control their reproductive cycle (estrus control) (limited to administration that occurs on the grounds of the pari-mutuel permitholder); kennel owners may use their regular Florida licensed veterinarian or may enter into a collective agreement for the services of a Florida licensed veterinarian to administer injectable testosterone as permitted; the administration of oral testosterone is permitted if it is validly prescribed and properly labeled; and veterinarians that administer injectable or oral testosterone are responsible for maintaining security, inventory, and a retrievable records/log in accordance with the Drug Enforcement Agency (DEA) regulations.
[5] A "sulfa drug" is an antibiotic used to treat bacterial and some fungal infections. *See* http://www.medicinenet.com/script/main/art.asp?articlekey=14498 (last visited Mar. 31, 2017).
[6] Under Rule 61D-6.007(2), F.A.C., the racing greyhound must be under the care of a Florida licensed veterinarian who also holds an occupational license pursuant to s. 550.105(2)(a), F.S.; the sulfa drugs must be prescribed by a Florida licensed veterinarian who also holds an occupational license pursuant to s. 550.105(2)(a), F.S.; and the sulfa drug is/are not administered within 24 hours prior to the officially scheduled post time of the race.
[7] These include the detection of (i) caffeine at a urinary concentration less than or equal to 200 nanograms per milliliter; (ii) theophylline and theobromine at a urinary concentration less than or equal to 400 nanograms per milliliter; (iii) procaine at a urinary concentration less than or equal to two micrograms per milliliter; and (iv) flunixin at a urinary concentration less than or equal to 250 nanograms per milliliter.
[8] *Id*.
[9] Rule 61D-6.002(2), F.A.C.

condition of the animals he or she enters to race[10] and for securing all prescribed medications, over-the-counter medicines, and natural or synthetic medicinal compounds.[11]

Samples of blood, urine, saliva, or any other bodily fluid may be collected from a race animal immediately before and immediately after it has raced.[12] If racing officials find, through reasonably reliable evidence, that substances other than permissible substances have been administered, or otherwise permissible substances have been administered during prohibited periods before the time of a race, evidence of illegal or impermissible substances may be confiscated and the racing animal may be prohibited from racing in the race (scratched).[13]

The winner of every race is sent to the detention enclosure for examination by an authorized representative of the division and the taking of samples to monitor and detect both permissible and impermissible substances.[14] Any other animals that participated in the race may be designated for examination and testing by the stewards, judges, racetrack veterinarian, or a division representative.[15]

All samples are collected by staff of the Office of Operations of the division and sent to the University of Florida College of Medicine Racing Laboratory (state laboratory) for analysis.[16] Blood specimens must be collected from racing animals by veterinarians employed by the division or any licensed veterinarian hired or retained by the division, and the collection must be witnessed by the animal's trainer, owner, or designee.[17]

The division, in its 85th Annual Report, noted that during Fiscal Year 2015-2016, the state laboratory processed 76,219 samples and performed 313,600 analyses:[18]

Sample Type	Horse Urine/Blood	Greyhound Urine	Investigative
Samples Received	16,945	58,274	2
Samples Analyzed	17,001	39,031	2
Number of Analyses	77,268	236,332	2
Positive Results	343	18	n/a

If a prohibited substance is found in a race-day specimen, it is evidence that the substance was administered to, and was in the racing animal while racing.[19] Test results are confidential and exempt from public records for 10 days after the testing of all samples collected on a particular day have been completed and the positive results have been reported to the director of the

[10] Rule 61D-6.002(1), F.A.C.
[11] Rule 61D-6.003, F.A.C. Prescription drugs must be prescribed by a licensed veterinarian who has a current veterinarian-patient relationship, and all substances must have a proper label.
[12] Section 550.2415(1)(a), F.S.
[13] *See* s. 550.2415(7) and (8), F.S., and Rule 61D-6.005, F.A.C.
[14] Rule 61D-6.005(1), F.A.C.
[15] *Id.*
[16] See *85th Annual Report, Fiscal Year 2015-2016*, (85th Annual Report) at page 31, at http://www.myfloridalicense.com/dbpr/pmw/documents/AnnualReports/AnnualReport-2015-2016--85th--20170125.pdf last visited Mar. 31, 2017). The division annually contracts with the state laboratory for these services.
[17] Rule 61D-6.005, F.A.C.
[18] *See* 85th Annual Report; *supra* note 14, at page 31.
[19] Section 550.2415(1)(c), F.S.

division.[20] A prosecution by the division against a licensee for a violation must begin within ninety days after the violation.[21]

The division must notify the owner or trainer, the stewards, and the appropriate horsemen's association of all drug test results.[22] At the request of either the affected owner or trainer, the division must send the sample to an independent laboratory for analysis.

If the positive result found by the state laboratory is not confirmed by the analysis made by the independent laboratory, no further administrative or disciplinary action may be pursued by the division.[23] If the positive result is confirmed, or if the volume of the secondary sample is insufficient to do so, then administrative action may proceed.[24] There must be a good faith attempt by the division to obtain a sufficient quantity of fluid specimens to allow both a primary test to be made by the state laboratory and a secondary test to be made by an independent laboratory.[25]

The mere presence of a prohibited substance in a racing animal is evidence of the violation.[26] The fine for violations may be up to $10,000 or the race winnings (purse or sweepstakes amount), whichever is greater.[27] Prosecutions must be started within 90 days of the race date.

The penalty schedule for violations incorporates the Uniform Classification Guidelines for Foreign Substances, Version 8.0, revised December 2014 (Uniform Classification Guidelines), by ARCI.[28] Pursuant to Florida Administrative Code Rule 61D-6.012, relating to penalty guidelines for drug violations in greyhounds, penalties are imposed when the division finds certain substances have been identified by the state laboratory in a urine sample or blood sample collected from a greyhound participating in a pari-mutuel event. These substances include any drug or medication (unapproved drugs or medications) that:

- Is not approved for veterinary use in the United States by the Food and Drug Administration;
- Cannot be detected by the state laboratory in a urine or blood sample unless the medication was administered within 24 hours of the race; or
- Is detected in urine or blood concentrations that indicate a dosage level that would constitute a threat to the health and safety of the greyhound.[29]

A first violation may result in a fine between $1,000 and $2,500, and a license suspension up to one year or a license revocation. Any subsequent violation may result in a fine between $2,500 and $5,000 and a license revocation.[30]

[20] *See* ss. 550.2415(1)(a), F.S.
[21] *See* s. 550.2415(4), F.S.
[22] Section 550.2415(5)(a), F.S.
[23] Section 550.2415(5)(b), F.S.
[24] Section 550.2415(5)(c), F.S.
[25] *Id*.
[26] *See* s. 550.2415(1)(c), F.S.
[27] *See* s. 550.2415(d)(a), F.S.
[28] *See* s. 550.2415(7)(c), F.S.
[29] *See* Rule 61D-6.012(1)(a), F.A.C.
[30] *Id*.

Penalties for the presence of other medications or drugs, other than unapproved drugs or medications described above, are based upon the classification of the medication or drug found in the Uniform Classification Guidelines.[31]

III. Effect of Proposed Changes:

The bill amends s. 550.2415, F.S., to include that a positive test result for anabolic steroids[32] in a racing greyhound before or after a race is a violation of the prohibition. Anabolic steroids (testosterone) are drugs whose uses include the control of the reproductive cycle in female greyhounds.[33]

The administration of testosterone or testosterone-like substances, for the control of estrus in female racing greyhounds, is permitted by rule of the division, subject to certain conditions.[34] Under the bill, no such use of those substances will be permitted.

The bill maintains existing procedures for determining violations. Any affected licensee will have the same due process rights, including the opportunity for a hearing, which law currently affords for alleged violations under s. 550.2415, F.S.

The bill provides an effective date of 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.

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[31] *See* Rule 61D-6.012(2), F.A.C.
[32] Steroids include drugs used to relieve swelling and inflammation, such as prednisone and cortisone; vitamin D; and some sex hormones, such as testosterone and estradiol. *See* http://www.medicinenet.com/script/main/art.asp?articlekey=5556 (last visited Mar. 31, 2017).
[33] *See* Rule 61D-6.007, F.A.C.
[34] *Id*.

B. Private Sector Impact:

The bill will have an indeterminate impact on greyhound tracks and the owners and trainers of greyhounds. The impact will depend on the frequency that anabolic steroids are found to be present in greyhounds engaged in racing in Florida as a result of testing of samples taken from greyhounds before or immediately after a race.

C. Government Sector Impact:

The bill may increase revenues to the Pari-Mutuel Wagering Trust Fund to the extent that violations occur and associated fines are imposed as a result of a greyhounds testing positive for the presence of anabolic steroids.[35]

The DBPR may incur additional costs for the necessary testing. The division contracts with the University of Florida, College of Medicine Racing Laboratory (state laboratory) to provide testing services. The current appropriation for that testing is $2,266,000.[36] The state laboratory has indicated to the division that its testing procedures must be amended to include detection of anabolic steroids, it must purchase a liquid chromatography-mass spectrometer to test approximately 40,000 greyhound racing samples annually (a cost of approximately $300,000 - $350,000), and it may need to amend the existing contract to cover that cost.[37]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The testing of samples from male greyhounds may also result in positive tests if levels of naturally occurring testosterone are not considered and addressed.

VIII. Statutes Affected:

This bill substantially amends section 550.2415 of the Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries Committee on April 6, 2017:
The committee substitute revises the title of the bill to "Steroid Use in Racing Greyhounds" from "Greyhound Dogs."

[35] *See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 512, dated Feb. 27, 2017 (on file with Senate Committee on Regulated Industries) at page 4.
[36] *Id*. at pages 4 -5.
[37] *Id*. at page 6.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senators Young, Rouson, and Steube

580-03525-17 2017512c1

A bill to be entitled

An act relating to steroid use in racing greyhounds; amending s. 550.2415, F.S.; providing that a positive test result for anabolic steroids in certain samples taken from a greyhound violates the prohibition on the racing of animals that are impermissibly medicated or determined to have a prohibited substance present; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 550.2415, Florida Statutes, is amended to read:

550.2415 Racing of animals under certain conditions prohibited; penalties; exceptions.—

(1)(a) The racing of an animal that has been impermissibly medicated or determined to have a prohibited substance present is prohibited. It is a violation of this section for a person to impermissibly medicate an animal or for an animal to have a prohibited substance present resulting in a positive test for such medications or substances based on samples taken from the animal before or immediately after the racing of that animal. It is a violation of this section for a greyhound to have anabolic steroids present resulting in a positive test for such steroids based on samples taken from the greyhound before or immediately after the racing of that greyhound. Test results and the identities of the animals being tested and of their trainers and owners of record are confidential and exempt from s. 119.07(1) and from s. 24(a), Art. I of the State Constitution for 10 days

580-03525-17 2017512c1

after testing of all samples collected on a particular day has been completed and any positive test results derived from such samples have been reported to the director of the division or administrative action has been commenced.

Section 2. This act shall take effect July 1, 2017.

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 /25/2017
Meeting Date

Topic _____ Bill Number 548 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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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S-001 (10/20/11)

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

512
Bill Number (if applicable)

Topic Greyhound Steroids

Amendment Barcode (if applicable)

Name Kate MacFall

Job Title State director

Address 1624 Metropolitan Circle
Street
Tallahassee
City *State* *Zip*

Phone 850 508-1001

Email kmacfall@hsus.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Humane Society of the United States

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/25/2017
Meeting Date

SB 512
Bill Number (if applicable)

Topic Greyhounds

Amendment Barcode (if applicable)

Name Crystal Carroll

Job Title Trainer

Address 7218 W 4th Ave.
Street

Phone

Hialeah FL 33014
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Greyhound Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/17
Meeting Date

SB512
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic STEROIDS IN GREYHOUND RACING

Name JENNIFER HOBGOOD

Job Title STATE LEGISLATIVE DIRECTOR

Address P O BOX 20554 *Street*

TALLAHASSEE FL 32316 *City* *State* *Zip*

Phone 445 5245

Email jen.hobgood@aspca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ASPCA (AMERICAN SOCIETY for the PREVENTION OF CRUELTY to ANIMALS)

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)

APPEARANCE RECORD

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

4/25/2017
Meeting Date

SB 512
Bill Number (if applicable)

Topic Greyhounds

Amendment Barcode (if applicable)

Name Kathy Ford

Job Title Founder And Volunteer

Address 1564 S. Lyons Ct
Street

Phone 407-365-7283

Oviedo FL 32765
City *State* *Zip*

Email ACTGREYHOUNDS@CFL.RR.CO

Speaking: ☐ For ☑ Against ☐ Information

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

Representing ACT Greyhound Adoptions 501c3

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)

APPEARANCE RECORD

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

04/25/2017
Meeting Date

SB 512
Bill Number (if applicable)

Topic Greyhounds

Amendment Barcode (if applicable)

Name Deborah Elliott

Job Title Greyhound Farm Owner

Address 7103 NW 21 Street
Street
Ocala, FL 34482
City *State* *Zip*

Phone 352-237-1852

Email depillbug@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

Duplicate

APPEARANCE RECORD

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

04/25/2017
Meeting Date

SB 512
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Greyhounds

Name Kelly Ganz

Job Title Greyhound Farm Kennel Helper

Address 7103 NW 21 Street
Street
Ocala, FL 34482
City *State* *Zip*

Phone 352-598-3883

Email GanzK1981gmail)

Speaking: ☐ For ☑ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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04/25/2017
Meeting Date

SB 512
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Greyhounds

Name Walter Elliott

Job Title Greyhound Farm Manager

Address 7103 NW 21 Street
Street
Ocala, FL 34482
City *State* *Zip*

Phone 352-207-5116

Email quinn5.1@juno.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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APPEARANCE RECORD

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04/25/2017
Meeting Date

SB 512
Bill Number (if applicable)

Topic Greyhounds

Amendment Barcode (if applicable)

Name Monica Wapinsky

Job Title Greyhound Farm Kennel Helper

Address 7103 NW 21 Street
Street
Ocala, FL 34482
City *State* *Zip*

Phone 352 484 7667

Email mWapinsky@Gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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04/25/2017
Meeting Date

SB 512
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Greyhounds

Name Brittnie Albury

Job Title Greyhound Farm Kennel Helper

Address 7103 NW 21 Street
Street
Ocala, FL 34482
City *State* *Zip*

Phone 352-615-0105

Email brittniealbury@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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APPEARANCE RECORD

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04/25/2017
Meeting Date

SB 512
Bill Number (if applicable)

Topic Greyhounds

Amendment Barcode (if applicable)

Name DAVID BARONE

Job Title Greyhound Farm Kennel Helper

Address 7103 NW 21 Street
Street
Ocala, FL 34482
City *State* *Zip*

Phone (772) 200 9538

Email david.barone47@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

Duplicate

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

SB 512
Bill Number (if applicable)

Topic Greyhound hormones

Amendment Barcode (if applicable)

Name Kate Johnson

Job Title Owner of Bartley Corp at St. Pete Kennel Club

Address 2001 83rd st. North
Street

St. Petersburg FL 33702
City *State* *Zip*

Phone (785)479-0836

Email katebartley04@hotmail.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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S-001 (10/14/14)

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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)

4-25-17
Meeting Date

SB 512
Bill Number (if applicable)

Topic Greyhound hormones

Amendment Barcode (if applicable)

Name Rick Bartley

Job Title owner of Bartley Corp at St. Pete Kennel Club

Address 2001 83rd St. North
Street

Phone 785-479-5980

St. Petersburg FL 33702
City *State* *Zip*

Email rrbartley@tctelco.net

~~Speaking~~: For (Against) Information

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

Representing

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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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)

4-25-17
Meeting Date

SB 512
Bill Number (if applicable)

Topic Greyhound hormones

Amendment Barcode (if applicable)

Name Rhonda Bartley

Job Title Owner of Bartley Corp at St. Pete Kennel Club

Address 2001 83rd St. North
Street

Phone 785-479-5980

St. Petersburg FL 33702
City *State* *Zip*

Email rrbartley@tctelco.net

~~Speaking~~: For (Against) Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

Reset Form

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 512
Bill Number (if applicable)

Topic Greyhound Hormones

Amendment Barcode (if applicable)

Name Jim Blanchard

Job Title President - Florida Greyhound Association

Address 190 6th ST.
Street

Phone 239-287-5026

Bonita Springs FL 34134
City *State* *Zip*

Email TBmet@Comcast.net

~~Speaking:~~ For (Against) Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/25/17
Meeting Date

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

512
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic GREYHOUND RACING

Name RAMON MAURY

Job Title

Address PO BOX 10245
Street

TALL FL 32302
City State Zip

Phone 8507721568

Email MMGgrap@AOL

Speaking: ☐ For ☒ Against ☒ Information

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

Representing FLORIDA GREYHOUND ASSOC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4-25-17
Meeting Date

SB 512
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Greyhound Racing

Name Calvin J. Holland

Job Title Pres. Tampa Bay Greyhound Assoc

Address 10926 1st La. N
Street

Phone 727-433-3834

St. Pete
City

Fla.
State

33716
Zip

Email Chol197139@Aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Fla. Greyhound Assoc.

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)

4/25/17
Meeting Date

SB 512
Bill Number (if applicable)

Topic Steroids in racing greyhounds

Amendment Barcode (if applicable)

Name Carey Theil

Job Title executive director

Address 7 Central St. Suite 210
Street

Phone 617-501-6276

Arlington MA 02476
City *State* *Zip*

Email Carey@greyhoundsa.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

APPEARANCE RECORD

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4/25/2017
Meeting Date

SB 512
Bill Number (if applicable)

Topic Greyhounds

Amendment Barcode (if applicable)

Name Steve Schlachter

Job Title Greyhound Owner

Address 2703 SW 43rd Terr.
Street

Phone 860-608-6374

Cape Coral FL 33914
City *State* *Zip*

Email SLAK44@comcast.net

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Greyhound Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

APPEARANCE RECORD

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4/25/2017
Meeting Date

SB 512
Bill Number (if applicable)

Topic Greyhounds

Amendment Barcode (if applicable)

Name JEAN Schlachter

Job Title Greyhound OWNER

Address 2703 SW 43rd Terr. Phone 239-257-2932
Street

Cape Coral FL 33914 Email SLAK44@COMCAST.NET
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Greyhound Association

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

APPEARANCE RECORD

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4/25/2017
Meeting Date

SB 512
Bill Number (if applicable)

Topic Greyhounds

Amendment Barcode (if applicable)

Name MARY ANN DITURO

Job Title RACING GREYHOUND OWNER

Address 6607 PATRICIA DRIVE
Street

Phone 561-758-1351

WEST PALM BEACH FL 33413
City *State* *Zip*

Email mdituro01@att.net

Speaking: ☐ For ☑ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

Reset Form

APPEARANCE RECORD

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

4-25-17
Meeting Date

SB512
Bill Number (if applicable)

Topic Greyhound hormones

Amendment Barcode (if applicable)

Name Eric Johnson

Job Title DOG owner

Address 2001 83rd St. North
Street

St. Petersburg FL 33702
City *State* *Zip*

Phone (785) 479-0836

Email eric.j@longmcarthur.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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S-001 (10/14/14)

THE FLORIDA SENATE

Reset Form

APPEARANCE RECORD

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4/25/17
Meeting Date

SB 512
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Greyhound Hormones

Name Kim Bartley

Job Title greyhound owner

Address 2001 83rd St. North
Street

Phone 620-617-2422

St. Petersburg FL 33702
City *State* *Zip*

Email Kim.bartley@live.com

~~Speaking~~: For (Against) Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

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

4-25-17
Meeting Date

SB512
Bill Number (if applicable)

Topic Greyhound hormones

Amendment Barcode (if applicable)

Name Travis Bartley

Job Title owner BartleyCorp at St. Pete Kennel Club

Address 2001 83rd St. North
Street

Phone 785-479-6613

St. Petersburg FL. 33702
City *State* *Zip*

Email travis.bartley@live.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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S-001 (10/14/14)

THE FLORIDA SENATE

Reset Form

APPEARANCE RECORD

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4-25-17
Meeting Date

512
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Greyhound Hormones

Name Mellissa Evans

Job Title Dog Owner - Greyhound Trainer

Address 190 6TH ST.
Street

Phone 239-287-4180

Bonita Springs, FL. 34134
City *State* *Zip*

Email tbmel@comcast.net

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

Representing

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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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:	PCS/CS/SB 876 (926878)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Young and others
SUBJECT:	Programs for Impaired Health Care Practitioners
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Loe	Williams	AHS	**Recommend: Fav/CS**
3.	Loe	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 876 revises multiple statutory provisions relating to treatment programs for impaired health care providers. Primarily, it clarifies in law the roles and responsibilities of the parties involved in the program, including the Department of Health (DOH), consultant, evaluator, treatment provider, and impaired practitioner. The bill removes the current authority granted to the DOH to specify by rule the manner in which consultants must work with the DOH in intervening, evaluating, treating, monitoring, providing continuing care, or expelling a professional from the program. This will now be governed by a contract between the DOH and each consultant. The bill defines certain terms relating to impaired practitioner programs, and provides that a licensee may report an impaired practitioner to a consultant who operates an impaired practitioner program, rather than to the DOH, under certain circumstances.

The bill authorizes the DOH to issue or renew a license for an individual convicted of, or entered a plea of guilty or nolo contendere to, a disqualifying offense before July 1, 2009, when the licensure disqualification law was enacted. The bill authorizes the DOH to issue or renew the license of an individual convicted of, or enters a plea of guilty or nolo contendere to, a disqualifying felony if the applicant successfully completes a pretrial diversion program and the plea has been withdrawn or the charges have been dismissed.

The bill requires a licensed midwife or health care provider to report any adverse incident resulting from an attempted or completed planned birth performed at a birthing center or otherwise off the premises of a hospital, to the DOH within 15 days.

The bill has no impact on state revenues or expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Treatment Programs for Impaired Practitioners

Section 456.076, F.S., provides resources to assist licensees[1] in health care professions[2] who are impaired as a result of the misuse or abuse of alcohol or drugs, or as a result of any mental or physical condition, which could affect the licensees' ability to practice with skill and safety.[3] For professions that do not have impaired practitioner programs provided for them in their practice acts, the DOH designate**s** approved impaired practitioner programs**.**

The DOH is required to retain one or more impaired practitioner consultants licensed under the jurisdiction of the Division of Medical Quality Assurance (MQA) within the DOH and who is a licensed physician or nurse; or an entity that employs a medical director who is a licensed physician, or an executive director who is a licensed nurse.

There are currently two department-approved treatment consultants for the impaired practitioner programs in Florida: the Professionals Resource Network (PRN) and the Intervention Project for Nurses (IPN).[4]

The PRN provides evaluations, treatment referrals, and monitoring for all health professions, except nursing and certified nursing assistants.[5,6] The IPN provides these services to nurses and certified nursing assistants.[7] These consultants initiate interventions, recommend evaluations, and refer impaired licensees to treatment programs or treatment providers approved by the DOH, and monitor the progress of impaired licensees. The PRN and IPN do not provide medical services. They act as liaisons between the DOH and approved treatment programs and providers. The DOH is not responsible for paying for the care provided by approved treatment providers or a consultant.

---

[1] Licensee is defined in s. 456.001(6), F.S., to include any permit, registration, certificate, or license, including a provisional license, issued by the DOH.
[2] Profession is defined in s. 456.001(7), F.S., to include any activity, occupation, profession, or vocation regulated by the DOH in the Division of MQA. *See also* s. 20.43(1)(g), F.S.
[3] The provisions of s. 456.076, F.S., also apply to veterinarians under s. 474.221, F.S., and radiological personnel under s. 468.315, F.S.
[4] *See* Professionals Resource Network, *available at* http://www.flprn.org/ *and* http://www.ipnfl.org/ (last visited Mar. 7, 2017).
[5] Professionals Resource Network, *About Us, available at* http://www.flprn.org/about (last visited Mar. 9, 2017).
[6] The PRN also provides evaluations, treatment referrals, and monitoring for harbor pilots and deputy harbor pilots regulated by the Board of Pilot Commissioners in the Department of Business and Professional Regulation. *See* s. 310.102, F.S.
[7] Intervention Project for Nurses, *IPN History, available at* http://www.ipnfl.org/ipnhistory.html (last visited Mar. 9, 2017)

A medical school, nursing program, or other health professional school may also contract with the PRN or IPN to provide services to an enrolled student if the student is allegedly impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition.[8]

The IPN and PRN, if requested, also serve as consultants to the DOH in cases that come before the practice boards or the DOH, including credentialing and monitoring of applicants, and assisting in the development of plans for licensee practice in a structured environment. They must also be available to testify in administrative hearings and other legal proceedings on behalf of the DOH.

Whenever a consultant, licensee, or approved treatment provider makes a disclosure of confidential information regarding a licensee to the DOH pursuant to law, that individual is not subject to civil liability for such disclosure or its consequences. If the contract with the consultant contains specified provisions, the consultant, the consultant's officers and employees, and those acting at the direction of the consultant are considered agents of the DOH for purposes of s. 768.28, F.S., relating to sovereign immunity.

The Department of Financial Services is required to defend the consultant, its officers and employees, and those acting at the direction of the consultant for the limited purpose of an emergency intervention when the consultant is unable to perform the intervention, from any legal action brought as a result of the consultant's duties under the DOH contract.[9]

When the DOH receives a legally sufficient[10] complaint alleging that a licensee is impaired, and no other complaint against the licensee exists, the reporting of such information does not constitute grounds for discipline if certain conditions are met.[11] Those conditions include findings by the appropriate board's probable cause panel,[12] or the DOH, if there is no board, that the licensee:

- Acknowledged the impairment problem;
- Enrolled in an appropriate, approved treatment program;
- Voluntarily withdrew from practice, or limited the scope of his or her practice, until he or she successfully completed the treatment program; and
- Released his or her medical records to the consultant.

If the DOH has not received a legally sufficient complaint, other than impairment, and the licensee agrees to withdraw from practice until such time as the consultant determines the

[8] Section 456.076(1)(c)2., F.S.
[9] Section 456.076(8), F.S.
[10] A complaint is legally sufficient if it contains ultimate facts that show the occurrence of a violation of a practice act, ch. 456, F.S., or a rule adopted by the DOH or a board. *See* s. 456.073(1), F.S.
[11] Section 456.076(4)(a), F.S.
[12] A probable cause panel is a panel designated by rule of each regulatory board that reviews investigative information related to a complaint to determine whether probable cause exists that a health care practitioner violated statutes governing the practice of the licensee's profession. If probable cause exists, the probable cause panel will direct DOH to file a formal complaint against the licensee. *See* s. 456.073(4), F.S.

licensee has satisfactorily completed an evaluation and approved treatment program, if appropriate, neither the probable cause panel nor the DOH will become involved in the case.[13]

If an impaired licensee fails to complete, or satisfactorily progress in, a treatment program, the consultant must follow specific procedures set forth in the contract with the DOH, up to and including, sending notification to the DOH of the dismissal of a licensee from the program and for the DOH to initiate disciplinary action.[14] When a licensee is dismissed from a treatment program, the consultant provides an evaluation of the licensee's impairment condition to the DOH. The evaluation is used by the DOH to determine if the licensee poses an immediate and serious danger to the public for the purpose of issuing an emergency order restricting or suspending his or her license to practice.

A licensee is required to report to the appropriate board or the DOH, if there is no board, any person who the licensee knows is in violation of ch. 456, F.S., the chapter regulating the alleged violator, or the rules of the department or the board.[15] This requirement also includes any person unable to practice with reasonable skill and safety to patients due to the misuse or abuse of alcohol or drugs, or as a result of any mental or physical condition.

Section 401.411, F.S., sets forth disciplinary guidelines for the DOH to take action against emergency medical technicians (EMTs), paramedics and emergency medical services (EMS) personnel. The guidelines include a penalty for failure to report any person known to be in violation of s. 401.411, F.S.[16] The guidelines also include a penalty for practicing as an EMT, paramedic, or EMS personnel without reasonable skill and without regard for the safety of the public because of illness, drunkenness, or the use of drugs, narcotics, chemicals, or any other substance, or as a result of any mental or physical condition.[17]

Disqualification from Licensure

In 2009, a law was enacted that prohibited the DOH from issuing or renewing the license of an individual who was convicted of, or entered a plea of nolo contendere to, regardless of adjudication of certain felonies related to Medicaid, Medicare, fraud, or controlled substances.[18] In 2012, the law was amended to create a tiered system of exclusions based on the severity of the crime and the amount of time elapsed between the crime and the application for licensure and provided an exception.[19]

Current law prohibits a board or the DOH, if there is no board, from allowing a person to sit for an examination or issue a license, certificate, or registration, if the applicant has been convicted of a felony under ch. 409, F.S., relating to social and economic programs, including Medicaid; ch. 817, F.S., relating to fraud; or ch. 893, F.S., relating to controlled substances; or a similar

[13] Section 456.076(4)(b), F.S.
[14] *See* s. 456.072(1)(hh), F.S.
[15] Section 456.072(1)(i), F.S.
[16] Section 401.411(1)(l), F.S.
[17] Section 401.411(1)(k), F.S.
[18] Chapter 2009-223, Laws of Florida, codified at s. 456.0635, F.S. If the sentences or any probation for a conviction ended more than 15 years before the date of application, DOH was not required to deny the license.
[19] Chapter 2012-64, Laws of Florida.

felony offense committed in another jurisdiction unless the individual successfully completed a drug court program for the felony and the plea was withdrawn or the charges were dismissed. A board or the DOH, if there is no board, may allow an applicant to sit for an examination or issue a license, certificate, or registration if the sentence or any related period of probation for a conviction ended:

- More than 15 years before the date of application for felonies of the first or second degree;
- More than 10 years before the date of application for felonies of the third degree, except for those under s. 893.13(6)(a), F.S.;[20] or
- More than 5 years before the date of application for felonies of the third degree under s. 893.13(6)(a), F.S.

These exclusions also apply to an applicant who:

- Has been convicted of, or entered a plea of guilty or no contest to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970 or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such convictions or plea ended more than 15 years before the date of application; or
- Is listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

Additionally, a board or the DOH is prohibited from renewing a license, certification, or registration if the applicant or candidate falls under the same restrictions established for initial licensure, certification, or registration. The same exceptions to the restrictions on initial licensure, certification, or registration apply for renewal applications; however, the renewal applicant or candidate must show that he or she is currently enrolled in a drug court program, rather than showing successful completion, as required of initial applicants. This disqualification from licensure – for felony convictions or pleas of guilty or no contest of the specified violations – did not apply until 2016 to applicants for initial licensure or certification, who were enrolled in a recognized training or education program as of July 1, 2009, and who applied for initial licensure after July 1, 2012. In 2016, this exception to the disqualification was repealed because individuals who were denied renewal based on one of the offenses, regardless of the date it was committed, were able to reapply and obtain new licenses based on the exemption.

Midwifery in Florida

The practice of midwifery in Florida provides expectant mothers and their families the freedom to choose the manner, cost, and setting for giving birth. The DOH regulates the practice of midwifery to ensure the proper care of mothers and their infants throughout the prenatal, intrapartum, and postpartum periods of pregnancy, labor, and delivery.[21] Accordingly, individuals wishing to practice midwifery in this state must be licensed by the DOH.[22]

[20] Section 893.13(6)(a), F.S., makes it unlawful for a person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription, or order, of a practitioner while acting the course of his or her professional practice; or to be in actual or constructive possession of a controlled substance except as otherwise authorized under ch. 893, F.S. Any person who violates this provision commits a felony in the third degree.
[21] Chapter 467, F.S.
[22] See sections 467.006 and 467.011, F.S.

A midwife's scope of practice includes providing care for only those mothers who are expected to have a normal pregnancy, labor, and delivery. A midwife may provide collaborative prenatal and postpartum care to pregnant women not at low risk in their pregnancy, labor, and delivery, within a written protocol from a physician[23] who maintains supervision of the midwife for directing the specific course of medical treatment. [24] Midwives are required to keep records of each patient served for at least five years. A midwife must submit a completed birth certificate for each birth attended to the registrar of vital statistics within five days following birth; and report all maternal deaths, newborn deaths, and stillbirths to the medical examiner immediately.[25] There is currently no requirement for midwives or other health professionals to report adverse incidents that occur within the midwives' scope of practice to the DOH.

Mandatory Reporting of Adverse Incidents

Under current law, certain professions, organizations, and facilities licensed or certified by the DOH and the Agency for Health Care Administration (AHCA) are required to report adverse incidents to the DOH or AHCA[26] within a specified period.[27]

The term "adverse incident" is defined according to the specific statute or rule governing the particular profession, organization, or facility,28 but generally means an event in which the professional, organization, or facility personnel could exercise control, rather than as a result of the condition of the patient or resident for which such intervention occurred, and which results in death or serious injury29 to the patient or resident.

III. Effect of Proposed Changes:

Section 1 amends s. 456.076(1), F.S., to define the terms: "impaired practitioner," "impairment," "inability to progress," "material noncompliance," and "practitioner." Defining these terms provides clarification to the DOH for contractual purposes and in legal proceedings.

This section deletes the provisions authorizing the DOH to adopt, by rule, the manner in which consultants work with the DOH in interventions, in evaluating and treating professionals, in providing and monitoring continued care of impaired professionals, and in expelling professionals from the program.

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[23] Licensed under ch. 458 or 459, F.S.
[24] Section 467.015, F.S.
[25] Section 467.019, F.S.
[26] Section 395.0197, F.S., (hospitals and ambulatory surgical centers); section 400.147, F.S., (nursing homes); s. 429.23, F.S., (assisted living facilities); sections 458.351 and 459.026, F.S. (physicians and physician assistants); s. 466.017, F.S., (dentists and dental hygienists); and s. 641.55, F.S. (health maintenance organizations and prepaid health clinics).
[27] *Id.* All of these professions, organizations, and facilities – with the exception of dentists and dental hygienists, health maintenance organizations (HMOs), and prepaid health clinics – are required to report an adverse incident to DOH or AHCA within 15 days. HMOs and prepaid health clinics are required to report the adverse incident to the AHCA within 3 working days after its first occurrence, and must submit a more detailed report within 10 days after the first report. Pursuant to Rule 64B5-14.006, F.A.C., dentists and dental hygienists are required to report the adverse occurrence that occurs in the dentist's outpatient facility within 48 hours, and must submit a more detailed report within 30 days, of its first occurrence.
[28] *Id.*
[29] Depending on the profession, organization, or facility, serious injury includes brain or spinal damage; permanent disfigurement; limitation of neurological, physical, or sensory function; or a fracture or dislocation of bones or joints.

This section requires that, if the DOH elects to retain one or more consultants to operate its impaired practitioner program, the terms and conditions of the impaired practitioner programs must be specified by the contract between the DOH and consultant, which must contain the following agreements:[30]

- Accept referrals;
- Arrange for evaluation and treatment of impaired practitioners when the consultant deems it necessary;
- Monitor the impaired practitioner's recovery process until monitoring is no longer needed or the practitioner is terminated for material non-compliance[31] or an inability to progress,[32] and
- Not directly evaluate, treat, or otherwise provide patient care to a practitioner in the program.

This section requires the consultant to execute a participant contract with an impaired practitioner that addresses, among other things, the terms of the monitoring. The consultant may modify the terms of the monitoring if the consultant concludes that extended, additional, or amended terms are needed to protect the health, safety, and welfare of the public.

This section provides that when the DOH receives a legally sufficient complaint alleging that a practitioner has an impairment, and no complaint exists other than impairment, the DOH must refer the practitioner to the consultant, along with all information in the DOH's possession relating to the impairment. The impairment does not constitute grounds for discipline pursuant to s. 456.072, F.S., or the applicable practice act, if the practitioner:

- Has acknowledged the impairment;
- Becomes a participant in an impaired practitioner program and successfully completes a participant contract;
- Has voluntarily withdrawn from practice, or has limited the scope of his or her practice, if required by the consultant;
- Has provided to the consultant, or has authorized the consultant to obtain, all records and information relating to the impairment from any source and all other medical records of the practitioner requested by the consultant; and
- Has authorized the consultant, in the event of the practitioner's termination from the impaired practitioner program, to report the termination to the DOH and provide the department with copies of all information in the consultant's possession relating to the practitioner.[33]

This section provides an exception to the mandatory referral of practitioners by the DOH to the consultant for EMTs, paramedics, and EMS personnel certified by the DOH and employed by a governmental entity if the practitioner is under a referral to an employee assistance program offered by his or her employer through the governmental entity.[34] If the practitioner fails to

[30] See s. 456.076(3) F.S., of the bill.
[31] The bill defines "material noncompliance" to mean an act or omission by a participant in violation of his or her participant contract as determined by the department or consultant.
[32] "Inability to progress" means a determination by a consultant based on a participant's response to treatment and prognosis that the participant is unable to safely practice despite compliance with the treatment requirement and his or her participant contract.
[33] See s. 456.076(10)(a), F.S., of the bill.
[34] Section 70.001(3)(c), F.S., defines "governmental entity" as an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that

complete the employee assistance program or is terminated by his or her employer, the employer is required to immediately notify the DOH, which must then refer the practitioner to the consultant pursuant to the terms of the impaired practitioner program and contract.

Under current law, probable cause panels reviewing complaints against a licensee may work directly with a consultant to determine if an impairment played a role in the complaint against a licensee, and what, if any, disciplinary action needs to be taken. This section requires the consultant to assist the DOH and licensure boards in matters involving impaired practitioners, including a determination of whether a practitioner is in fact impaired, rather than this process taking place before probable cause panels.

The mandatory requirement that the practitioner release all records and information relating to the impairment from any source, and all other medical records of the practitioner requested by the consultant, may be broader than the release requirement under current law.[35] Current law requires the practitioner to authorize the release of all records of evaluations, diagnoses and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant.

This section modifies when a consultant must report an impaired practitioner in a treatment program to the DOH. Unless authorized by the participant, the consultant may not provide information to the DOH relating to a self-referring participant if the consultant has no knowledge of a pending DOH investigation, complaint, or disciplinary action against the participant, and if the participant is in compliance with the terms of the impaired practitioner program and contract.[36]

When a referral or participant is terminated from the impaired practitioner program for a material noncompliance with a participant contract, an inability to progress, or any other reason than completion, the consultant is required to disclose all information in the consultant's possession relating to the practitioner to the DOH. Such disclosure constitutes a complaint that the DOH will then investigate. Whenever the consultant concludes that impairment affects a practitioner's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, the

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independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority.

[35] For example, in 2016, the Legislature enacted Senate Bill 964 authorizing, among other things, an impaired practitioner consultant indirect access to the Florida Prescription Drug Monitoring Program (PDMP) for the purpose of reviewing the database information of an impaired practitioner program participant or a referral who has separately agreed in writing to the consultant's access to and review of such information. *See* ss. 893.055(7)(c)5 and 893.0551(3)(h), F.S. This potentially creates a coercive method of requiring the practitioner to give up his or her PDMP records to the consultant, and by extension, to the DOH for disciplinary action. In order to attempt to avoid discipline for the practitioner, the bill requires the practitioner to release any information that relates to the practitioner's impairment, and any other records the consultant requests. The PDMP records would be medical records related to the impairment that the consultant would request the practitioner to release. Were the practitioner then to be terminated from the impaired practitioner program for any reason, the consultant would be required to turn those records over to the DOH. The DOH does not have authority to access these PDMP records, either directly or indirectly.

[36] See s. 465.076(9)(b), F.S., of the bill

consultant is required to immediately communicate such conclusion to the DOH and provide all information in the consultant's possession relating to the practitioner to the DOH.[37]

A consultant may request of an approved evaluator, treatment program, or treatment provider, with the authorization of the practitioner when required by law, all information in its possession regarding a referral or participant. Failure to provide such information to the consultant is grounds for withdrawal of approval by the DOH of such evaluator, treatment program, or treatment provider.[38]

The confidential or exempt information obtained by the consultant retains its confidential or exempt status.[39] However, the bill does not provide any protection for the information once sent to the DOH, or obtained by an evaluator or treatment provider, from a public records request.

This section protects the consultant, or a director, officer, employee, or agent of a consultant, from financial liability or any other cause of action for damages related to making a disclosure, or for any action or omission, against a license, registration, or certification.[40] Under current law a consultant, the consultant's officers and employees, and those acting at the direction of the consultant are considered agents of the DOH, and have sovereign immunity while acting within the course and scope of their contract.[41] The bill extends that protection to include directors, officers, employees or agents of a consultant.[42] The provisions of s. 766.101, F.S., apply to any consultant and the consultant's directors, officers, employees, or agents in regards to providing information relating to a participant to a medical review committee if the participant authorizes such disclosure.[43]

This section directs the Department of Financial Services to defend the consultant, consultant's directors, officers, employees and agents against any claim, suit, action, or proceeding for injunction, affirmative, or declaratory relief, as the result of any action or omission relating to the impaired practitioner program.[44]

This section provides that, if another state agency retains a consultant under contract with the DOH, the provisions of the contract between the DOH and the consultant applies to the consultant's operation of an impaired practitioner program for that agency.

A consultant may disclose to a referral or participant, or to the legal representative of the referral or participant, the documents, records, or other information from the consultant's file, including information received by the consultant from other sources, and information on the terms required for the referral's or participant's monitoring contract, the referral's or participant's progress or inability to progress, the referral's or participant's discharge or termination, information supporting the conclusion of material noncompliance, or any other information required by law.

[37] See s. 456.076(11)(b), F.S., of the bill.
[38] See s. 456.076(11)(a), F.S., of the bill.
[39] See s 456.016(2), F.S., of the bill.
[40] See s. 456.076(13), F.S., of the bill.
[41] See s. 456.076(15)(a), F.S., of the bill.
[42] *Supra* note 38.
[43] See s. 456.076(14), F.S., of the bill.
[44] See s. 456.076(15)(b), F.S., of the bill.

If a consultant discloses information to the DOH in accordance with this program, a referral or participant, or his or her legal representative, may obtain a complete copy of the consultant's file from the consultant or the DOH.[45]

Section 2 amends s. 401.411(1)(l), F.S., to authorize emergency medical personnel that become aware of an individual in their profession that is impaired due to illness, the use of alcohol or drugs, or as a result of a mental or physical condition, to report the individual to the consultant rather than the DOH, as required under current law, without facing disciplinary action.

Section 4 amends s. 456.0635(2)-(3), F.S., to exempt individuals convicted of, or entered a plea of guilty or nolo contendere to, disqualifying offenses prior to July 1, 2009, from being disqualified for licensure, preventing retroactive applicability. This section also authorizes the DOH to allow an individual to sit for an examination or issue or renew a license, certificate, or registration for a person who is convicted of, or enters a plea of guilty or nolo contendere, to a disqualifying felony if the applicant successfully completes a pretrial diversion program and provides proof that the plea has been withdrawn or the charges have been dismissed.

Sections 5 through 13, 15 through 18, 20, and 21 amend s. 456.072, F.S., and various statutes,[46] to authorize a practitioner to report another impaired professional to a consultant, rather than the DOH or applicable regulatory board, without facing disciplinary action.

Section 22 requires a licensed midwife or health care provider to report any adverse incident resulting from an attempted or completed planned birth performed at a birthing center or otherwise off the premises of a hospital, to the DOH within 15 days. This section requires the DOH to adopt rules establishing guidelines for reporting adverse incidents, which shall at a minimum include:

- Intrapartum and postpartum[47] maternal deaths;
- Transfers of maternal or infant patients to a hospital intensive care unit (ICU) under certain conditions;[48]
- Maternal patients who experience hemorrhagic shock or require a blood transfusion;[49] and
- Fetal or infant deaths, including stillbirths,[50] associated with obstetrical deliveries.

Section 23 provides for the bill to take effect upon becoming a law.

[45] See s. 456.076, (17), F.S., of the bill.
[46] Section 457.109, F.S., (acupuncture); s. 458.331, F.S., (medical practice); s. 459.015, F.S., (osteopathic medicine); s. 460.413, F.S., (chiropractic medicine); s. 461.013, F.S., (podiatric medicine); s. 462.14, F.S., (naturopathy); s. 463.016, F.S., (optometry); s. 464.018, F.S., (nursing); s. 465.016, F.S., (pharmacy); s. 466.028, F.S., (dentistry, dental hygiene, and dental laboratories); s. 467.203, F.S., (midwifery); s. 468.217, F.S.; (occupational therapy); s. 474.221, F.S., (veterinary medicine); and s. 483.825, F.S. (clinical laboratory personnel).
[47] Section 456.0495(2)(a), F.S., of the bill, specifies up to 42 days postpartum.
[48] Section 456.0495(2)(e)-(f), F.S., of the bill, specifies transfers of infants to a neonatal ICU due to a traumatic physical or neurological birth injury, including any degree of a brachial plexus injury, or within the first 72 hours after birth if the infant remains in the ICU for more than 72 hours.
[49] Section 456.0495(2)(e)-(f), F.S., of the bill, specifies transfusions of more than four units of blood or blood products.
[50] Section 467.003(14), F.S., defines "stillbirth" to mean the death of a fetus of more than 20 weeks' gestation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill protects the confidential or exempt information obtained by the consultant from a public records request; but the bill does not protect any of the information sent to the DOH, or obtained by an evaluator or treatment provider, from a public records request.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill's definitions of, "inability to progress," and "material noncompliance," may create due process issues as conclusive presumptions.[51]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Due to the expansion of individuals who are afforded a defense by the Department of Financial Services for claims, actions, suits, or proceedings, there may be an insignificant indeterminate negative fiscal impact on the Risk Management Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[51] A "conclusive presumption" is one in which proof of a basic fact renders the existence of the presumed fact conclusive and irrevocable regardless of any evidence to the contrary. Black's Law Dictionary, 6th Ed., 1992.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.076, 401.411, 455.227, 456.0635, 456.072, 457.109, 458.331, 459.015, 460.413, 461.013, 462.14, 463.016, 464.018, 464.204, 465.016, 466.028, 467.203, 468.217, 468.3101, 474.221, and 483.825.

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 recommended PCS to CS/SB 876:

- Requires licensed midwives and health care providers to report adverse incidents resulting from an attempted or completed planned birth within 15 days to the DOH.
- Prohibits the DOH from initially referring EMTs, paramedics, and EMS personnel to an impaired practitioner program consultant if certain conditions are met.
- Clarifies provisions relating to disqualification for licensure.

CS by Health Policy on March 14, 2017:
The CS:

- Amends the definition of referral to make clear that it includes self-referrals, referrals of one practitioner by another, and referrals reported by the DOH.
- Condenses and reorganizes the section which provides for contract terms and conditions with a consultant, but makes no substantive changes.
- Changes the terms "certify" and "decline to certify," to "approve" and "deny," respectively, to more accurately describe the actions.
- Clarifies that the consultant is not required to disclose information to the DOH on self- referring practitioners if the consultant has no knowledge of a complaint.
- Reinstates and amends the language that specifies that the consultant is an agent of the state for purposes of sovereign immunity when acting pursuant to its contract.
- Authorizes disclosure to the referral, participant or the legal representative of either, the documents and information received by the consultant pertaining to and supporting the participant's discharge or termination from an impaired practitioner program; and any information the consultant discloses to the DOH.
- Amends the provisions relating to disqualification for licensure, and provides an exception for pretrial diversion.

B. Amendments:

None.

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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 health care practitioners; amending s. 456.076, F.S.; revising provisions related to impaired practitioner programs; providing definitions; deleting a requirement that the Department of Health designate approved programs by rule; deleting a requirement authorizing the department to adopt by rule the manner in which consultants work with the department in intervention, in evaluating and treating professionals, in providing and monitoring continued care of impaired professionals, and in expelling professionals from the program; authorizing, instead of requiring, the department to retain one or more consultants to operate its impaired practitioner program; requiring the department to establish the terms and conditions of the program by contract; providing contract terms; requiring consultants to establish the terms of monitoring impaired practitioners; authorizing consultants to consider the recommendations of certain persons in establishing the terms of monitoring; authorizing consultants to modify monitoring terms to protect the health, safety, and welfare of the public; requiring consultants to assist the department and licensure boards on matters relating to impaired practitioners; making technical changes; requiring the department to refer practitioners to consultants under certain

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circumstances; authorizing consultants to withhold certain information about self-reporting participants from the department under certain circumstances to encourage self-reporting; requiring consultants to disclose all information relating to practitioners who are terminated from the program for material noncompliance; providing that all information obtained by a consultant retains its confidential or exempt status; providing that consultants, and certain agents of consultants, may not be held liable financially or have a cause of action for damages brought against them for disclosing certain information or for any other act or omission relating to the program; authorizing consultants to contract with a school or program to provide services to certain students; amending s. 401.411, F.S.; providing that an impaired practitioner may be reported to a consultant rather than the department under certain circumstances; amending s. 455.227, F.S.; conforming provisions to changes made by the act; amending s. 456.0635, F.S.; providing that, under certain circumstances, a board or, if there is no board, the department, is not required to refuse to admit certain candidates to an examination, to issue a license, certificate, or registration to certain applicants, or to renew a license, certificate, or registration of certain applicants if they have successfully completed a pretrial diversion program; providing applicability; amending ss. 456.072, 457.109, 458.331, 459.015,

460.413, 461.013, 462.14, 463.016, and 464.018, F.S.; providing that an impaired practitioner may be reported to a consultant rather than the department under certain circumstances; amending s. 464.204, F.S.; conforming provisions to changes made by the act; amending ss. 465.016, 466.028, 467.203, 468.217, and 468.3101, F.S.; providing that an impaired practitioner may be reported to a consultant rather than the department under certain circumstances; amending s. 474.221, F.S.; conforming provisions to changes made by the act; amending s. 483.825, F.S.; providing that certain persons may be reported to a consultant rather than the department under certain circumstances; creating s. 456.0495, F.S.; requiring licensed midwives and health care providers to report adverse incidents to the Department of Health within a certain period; requiring the department to adopt rules establishing guidelines for reporting specified adverse incidents; providing an effective date.

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

Section 1. Section 456.076, Florida Statutes, is amended to read:

456.076 Impaired practitioner programs ~~Treatment programs for impaired practitioners~~.—

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

(a) "Consultant" means the individual or entity who operates an approved impaired practitioner program pursuant to a

contract with the department and who is retained by the department as provided in subsection (2).

(b) "Evaluator" means a state-licensed or nationally certified individual who has been approved by a consultant or the department, who has completed an evaluator training program established by the consultant, and who is therefore authorized to evaluate practitioners as part of an impaired practitioner program.

(c) "Impaired practitioner" means a practitioner with an impairment.

(d) "Impaired practitioner program" means a program established by the department by contract with one or more consultants to serve impaired and potentially impaired practitioners for the protection of the health, safety, and welfare of the public.

(e) "Impairment" means a potentially impairing health condition that is the result of the misuse or abuse of alcohol, drugs, or both, or a mental or physical condition that could affect a practitioner's ability to practice with skill and safety.

(f) "Inability to progress" means a determination by a consultant based on a participant's response to treatment and prognosis that the participant is unable to safely practice despite compliance with treatment requirements and his or her participant contract.

(g) "Material noncompliance" means an act or omission by a participant in violation of his or her participant contract as determined by the department or consultant.

(h) "Participant" means a practitioner who is participating

in the impaired practitioner program by having entered into a participant contract. A practitioner ceases to be a participant when the participant contract is successfully completed or is terminated for any reason.

(i) "Participant contract" means a formal written document outlining the requirements established by a consultant for a participant to successfully complete the impaired practitioner program, including the participant's monitoring plan.

(j) "Practitioner" means a person licensed, registered, certified, or regulated by the department under part III of chapter 401; chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; or an applicant for a license, registration, or certification under the same laws.

(k) "Referral" means a practitioner who has been referred, either as a self-referral or otherwise, or reported to a consultant for impaired practitioner program services, but who is not under a participant contract.

(l) "Treatment program" means a department- or consultant-approved residential, intensive outpatient, partial hospitalization or other program through which an impaired practitioner is treated based on the impaired practitioner's diagnosis and the treatment plan approved by the consultant.

(m) "Treatment provider" means a department- or consultant-approved state-licensed or nationally certified individual who provides treatment to an impaired practitioner based on the

practitioner's individual diagnosis and a treatment plan approved by the consultant ~~For professions that do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved impaired practitioner programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers. The rules may specify the manner in which the consultant, retained as set forth in subsection (2), works with the department in intervention, requirements for evaluating and treating a professional, requirements for continued care of impaired professionals by approved treatment providers, continued monitoring by the consultant of the care provided by approved treatment providers regarding the professionals under their care, and requirements related to the consultant's expulsion of professionals from the program~~.

(2)~~(a)~~ The department may ~~shall~~ retain one or more ~~impaired practitioner~~ consultants to operate its impaired practitioner program. Each consultant ~~who are each licensees under the jurisdiction of the Division of Medical Quality Assurance within the department and who~~ must be:

(a)~~1.~~ A practitioner ~~or recovered practitioner~~ licensed under chapter 458, chapter 459, or part I of chapter 464; or

(b)~~2.~~ An entity that employs:

1.~~a.~~ A medical director who is ~~must be a practitioner or recovered practitioner~~ licensed under chapter 458 or chapter 459; or

2.~~b.~~ An executive director who is ~~must be a registered nurse or a recovered registered nurse~~ licensed under part I of chapter 464.

(3) The terms and conditions of the impaired practitioner program must be established by the department by contract with a consultant for the protection of the health, safety, and welfare of the public and must provide, at a minimum, that the consultant:

(a) Accepts referrals;

(b) Arranges for the evaluation and treatment of impaired practitioners by a treatment provider, when the consultant deems the evaluation and treatment necessary;

(c) Monitors the recovery progress and status of impaired practitioners to ensure that such practitioners are able to practice their profession with skill and safety. Such monitoring must continue until the consultant or department concludes that monitoring by the consultant is no longer required for the protection of the public or until the practitioner's participation in the program is terminated for material noncompliance or inability to progress; and

(d) Does not directly evaluate, treat, or otherwise provide patient care to a practitioner in the operation of the impaired practitioner program.

(4) The department shall specify, in its contract with each consultant, the types of licenses, registrations, or certifications of the practitioners to be served by that consultant.

(5) A consultant shall enter into a participant contract with an impaired practitioner and shall establish the terms of monitoring and shall include the terms in a participant contract. In establishing the terms of monitoring, the consultant may consider the recommendations of one or more

approved evaluators, treatment programs, or treatment providers. A consultant may modify the terms of monitoring if the consultant concludes, through the course of monitoring, that extended, additional, or amended terms of monitoring are required for the protection of the health, safety, and welfare of the public.

(6) ~~(b)~~ A ~~An entity retained as an impaired practitioner~~ consultant ~~under this section which employs a medical director or an executive director~~ is not required to be licensed as a substance abuse provider or mental health treatment provider under chapter 394, chapter 395, or chapter 397 for purposes of providing services under this program.

(7) ~~(c) 1.~~ Each ~~The~~ consultant shall assist the department and licensure boards on matters of impaired practitioners, including the determination of ~~probable cause panel and the department in carrying out the responsibilities of this section. This includes working with department investigators to determine~~ whether a practitioner is, in fact, impaired, as specified in the consultant's contract with the department.

~~2. The consultant may contract with a school or program to provide services to a student enrolled for the purpose of preparing for licensure as a health care practitioner as defined in this chapter or as a veterinarian under chapter 474 if the student is allegedly impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition. The department is not responsible for paying for the care provided by approved treatment providers or a consultant.~~

~~(d) A medical school accredited by the Liaison Committee on Medical Education or the Commission on Osteopathic College~~

~~Accreditation, or another school providing for the education of students enrolled in preparation for licensure as a health care practitioner as defined in this chapter or a veterinarian under chapter 474 which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for disciplinary actions that adversely affect the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.~~

(8) ~~(3)~~ Before issuing an approval of, or intent to deny, an application for licensure, each board and profession within the Division of Medical Quality Assurance may delegate to its chair or other designee its authority to determine~~, before certifying or declining to certify an application for licensure to the department,~~ that an applicant for licensure under its jurisdiction may have an impairment ~~be impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition that could affect the applicant's ability to practice with skill and safety~~. Upon such determination, the chair or other designee may refer the applicant to the consultant to facilitate ~~for~~ an evaluation before the board issues an approval of, ~~certifies~~ or intent to

deny, ~~declines to certify~~ his or her application ~~to the department~~. If the applicant agrees to be evaluated ~~by the consultant~~, the department's deadline for approving or denying the application pursuant to s. 120.60(1) is tolled until the evaluation is completed and the result of the evaluation and recommendation ~~by the consultant~~ is communicated to the board by the consultant. If the applicant declines to be evaluated ~~by the consultant~~, the board shall issue an approval of, or intent to deny, ~~certify or decline to certify~~ the applicant's application ~~to the department~~ notwithstanding the lack of an evaluation and recommendation by the consultant.

(9)(a) ~~(4)(a)~~ Except as provided in paragraph (b), when ~~Whenever~~ the department receives a ~~written or oral~~ legally sufficient complaint alleging that a practitioner has an impairment ~~licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety,~~ and no complaint exists against the practitioner ~~licensee~~ other than impairment ~~exists~~, the department shall refer the practitioner to the consultant, along with all information in the department's possession relating to the impairment. The impairment does ~~reporting of such information shall~~ not constitute grounds for discipline pursuant to s. 456.072 or ~~the corresponding grounds for discipline within~~ the applicable practice act if ~~the probable cause panel of the appropriate board, or the department when there is no board, finds~~:

1. The practitioner ~~licensee~~ has acknowledged the

impairment; ~~problem.~~

2. The practitioner becomes a participant ~~licensee has voluntarily enrolled~~ in an impaired practitioner program and successfully completes a participant contract under terms established by the consultant; ~~appropriate, approved treatment program.~~

3. The practitioner ~~licensee~~ has voluntarily withdrawn from practice or has limited the scope of his or her practice if ~~as~~ required by the consultant;~~, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program.~~

4. The practitioner ~~licensee~~ has provided to the consultant, or has authorized the consultant to obtain, all records and information relating to the impairment from any source and all other medical records of the practitioner requested by the consultant; and ~~executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the licensee's impairment and his or her participation in a treatment program.~~

5. The practitioner has authorized the consultant, in the event of the practitioner's termination from the impaired practitioner program, to report the termination to the department and provide the department with copies of all information in the consultant's possession relating to the practitioner.

(b) For practitioners who are employed by governmental entities and who are also certified by the department pursuant to part III of chapter 401, the department may not refer the practitioner to the consultant if the practitioner is under a referral by the practitioner's employer to an employee assistance program through the governmental entity. If the practitioner fails to satisfactorily complete the employee assistance program or if his or her employment is terminated, his or her employer must immediately notify the department, which shall then refer the practitioner to the consultant as required in paragraph (a). For purposes of this paragraph, the term "governmental entity" has the same meaning as provided in s. 70.001(3)(c).

(c) To encourage practitioners who are or may be impaired to voluntarily self-refer to a consultant, the consultant may not provide information to the department relating to a self-referring participant if the consultant has no knowledge of a pending department investigation, complaint, or disciplinary action against the participant and if the participant is in compliance and making progress with the terms of the impaired practitioner program and contract, unless authorized by the participant ~~If, however, the department has not received a legally sufficient complaint and the licensee agrees to withdraw from practice until such time as the consultant determines the licensee has satisfactorily completed an approved treatment program or evaluation, the probable cause panel, or the department when there is no board, shall not become involved in the licensee's case~~.

~~(c) Inquiries related to impairment treatment programs~~

~~designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint within the meaning of s. 456.073 and shall be exempt from the provisions of this subsection.~~

~~(d) Whenever the department receives a legally sufficient complaint alleging that a licensee is impaired as described in paragraph (a) and no complaint against the licensee other than impairment exists, the department shall forward all information in its possession regarding the impaired licensee to the consultant. For the purposes of this section, a suspension from hospital staff privileges due to the impairment does not constitute a complaint.~~

~~(c) The probable cause panel, or the department when there is no board, shall work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, shall remain confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of subsections (6) and (7).~~

~~(f) A finding of probable cause shall not be made as long as the panel, or the department when there is no board, is satisfied, based upon information it receives from the consultant and the department, that the licensee is progressing satisfactorily in an approved impaired practitioner program and no other complaint against the licensee exists.~~

(10)~~(5)~~ In any disciplinary action for a violation other than impairment in which a practitioner ~~licensee~~ establishes the violation for which the practitioner ~~licensee~~ is being

prosecuted was due to or connected with impairment and further establishes the practitioner ~~licensee~~ is satisfactorily progressing through or has successfully completed an impaired practitioner program ~~approved treatment program~~ pursuant to this section, such information may be considered by the board, or the department when there is no board, as a mitigating factor in determining the appropriate penalty. This subsection does not limit mitigating factors the board may consider.

(11)(a)~~(6)(a)~~ Upon request by the consultant, and with the authorization of the practitioner when required by law, an approved evaluator, treatment program, or treatment provider shall~~, upon request,~~ disclose to the consultant all information in its possession regarding a referral or participant ~~the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to this section is confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of this subsection and subsection (7)~~. Failure to provide such information to the consultant is grounds for withdrawal of approval of such evaluator, treatment program, or treatment provider.

(b) When a referral or participant is terminated from the impaired practitioner program for material noncompliance with a participant contract, inability to progress, or any other reason than completion, the consultant shall disclose ~~If in the opinion of the consultant, after consultation with the treatment provider, an impaired licensee has not progressed satisfactorily in a treatment program,~~ all information ~~regarding the issue of a licensee's impairment and participation in a treatment program~~

in the consultant's possession relating to the practitioner ~~shall be disclosed~~ to the department. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 456.073. In addition, whenever the consultant concludes that impairment affects a practitioner's ~~licensee's~~ practice and constitutes an immediate, serious danger to the public health, safety, or welfare, the consultant shall immediately communicate such ~~that~~ conclusion ~~shall be communicated~~ to the department and disclose all information in the consultant's possession relating to the practitioner to the department ~~State Surgeon General~~.

(12) All information obtained by the consultant pursuant to this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(13)~~(7)~~ A consultant, or a director, officer, employee, or agent of a consultant, may not be held liable financially or may not have a cause of action for damages brought against him or her for making a disclosure pursuant to this section, for any other action or omission relating to the impaired practitioner program, or for the consequences of such disclosure or action or omission, including, without limitation, action by the department against a license, registration, or certification ~~licensee, or approved treatment provider who makes a disclosure pursuant to this section is not subject to civil liability for such disclosure or its consequences~~.

(14) The provisions of s. 766.101 apply to any consultant and the consultant's directors, officers, employees, or agents in regards to providing information relating to a participant to a medical review committee if the participant authorizes such disclosure ~~officer, employee, or agent of the department or the~~

~~board and to any officer, employee, or agent of any entity with which the department has contracted pursuant to this section~~.

(15)(a)~~(8)(a)~~ A consultant retained pursuant to this section and ~~subsection (2),~~ a consultant's directors, officers, ~~and~~ employees, or agents ~~and those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention~~ shall be considered agents of the department for purposes of s. 768.28 while acting within the scope of the consultant's duties under the contract with the department ~~if the contract complies with the requirements of this section~~. ~~The contract must require that:~~

~~1. The consultant indemnify the state for any liabilities incurred up to the limits set out in chapter 768.~~

~~2. The consultant establish a quality assurance program to monitor services delivered under the contract.~~

~~3. The consultant's quality assurance program, treatment, and monitoring records be evaluated quarterly.~~

~~4. The consultant's quality assurance program be subject to review and approval by the department.~~

~~5. The consultant operate under policies and procedures approved by the department.~~

~~6. The consultant provide to the department for approval a policy and procedure manual that comports with all statutes, rules, and contract provisions approved by the department.~~

~~7. The department be entitled to review the records relating to the consultant's performance under the contract for the purpose of management audits, financial audits, or program~~

~~evaluation.~~

~~8. All performance measures and standards be subject to verification and approval by the department.~~

~~9. The department be entitled to terminate the contract with the consultant for noncompliance with the contract.~~

(b) In accordance with s. 284.385, the Department of Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, or the consultant's directors, officers, ~~or~~ employees, and agents brought as the result of any action or omission relating to the impaired practitioner program ~~or those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention, which claim, suit, action, or proceeding is brought as a result of an act or omission by any of the consultant's officers and employees and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of the licensee or student when the consultant is unable to perform such intervention, if the act or omission arises out of and is in the scope of the consultant's duties under its contract with the department~~.

(16)~~(c)~~ If a ~~the~~ consultant retained by the department pursuant to this section ~~subsection (2)~~ is also retained by another ~~any other~~ state agency to operate an impaired practitioner program for that agency, this section also applies to the consultant's operation of an impaired practitioner program for that agency~~, and if the contract between such state~~

~~agency and the consultant complies with the requirements of this section, the consultant, the consultant's officers and employees, and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the state for the purposes of this section while acting within the scope of and pursuant to guidelines established in the contract between such state agency and the consultant~~.

(17)~~(9)~~ A ~~An impaired practitioner consultant is the official custodian of records relating to the referral of an impaired licensee or applicant to that consultant and any other interaction between the licensee or applicant and the consultant. The~~ consultant may disclose to a referral or participant, or to the legal representative of the referral or participant, the documents, records, or other information from the consultant's file, including information received by the consultant from other sources, and information on the terms required for the referral's or participant's monitoring contract, the referral's or participant's progress or inability to progress, the referral's or participant's discharge or termination, information supporting the conclusion of material noncompliance, or any other information required by law ~~the impaired licensee or applicant or his or her designee any information that is disclosed to or obtained by the consultant or that is confidential under paragraph (6)(a), but only to the extent that it is necessary to do so to carry out the consultant's duties under this section~~. ~~The department, and any~~

~~other entity that enters into a contract with the consultant to receive the services of the consultant, has direct administrative control over the consultant to the extent necessary to receive disclosures from the consultant as allowed by federal law.~~ If a consultant discloses information to the department in accordance with this part, a referral or participant, or his or her legal representative, may obtain a complete copy of the consultant's file from the consultant or ~~disciplinary proceeding is pending, an impaired licensee may obtain such information from~~ the department under s. 456.073.

(18)(a) The consultant may contract with a school or program to provide impaired practitioner program services to a student enrolled for the purpose of preparing for licensure as a health care practitioner as defined in this chapter or as a veterinarian under chapter 474 if the student has or is suspected of having an impairment. The department is not responsible for paying for the care provided by approved treatment providers or approved treatment programs or for the services provided by a consultant to a student.

(b) A medical school accredited by the Liaison Committee on Medical Education or the Commission on Osteopathic College Accreditation, or another school providing for the education of students enrolled in preparation for licensure as a health care practitioner as defined in this chapter, or a veterinarian under chapter 474, which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for disciplinary actions that adversely affect the status of a

student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.

Section 2. Paragraph (l) of subsection (1) of section 401.411, Florida Statutes, is amended to read:

401.411 Disciplinary action; penalties.—

(1) The department may deny, suspend, or revoke a license, certificate, or permit or may reprimand or fine any licensee, certificateholder, or other person operating under this part for any of the following grounds:

(l) The failure to report to the department any person known to be in violation of this part. However, a professional known to be operating under this part without reasonable skill and without regard for the safety of the public by reason of illness, drunkenness, or the use of drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 3. Paragraph (u) of subsection (1) of section 455.227, Florida Statutes, is amended to read:

455.227 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be

taken:

(u) Termination from an impaired practitioner program ~~a treatment program for impaired practitioners~~ as described in s. 456.076 for failure to comply, without good cause, with the terms of the monitoring or participant ~~treatment~~ contract entered into by the licensee or failing to successfully complete a drug or alcohol treatment program.

Section 4. Subsections (2) and (3) of section 456.0635, Florida Statutes, are amended to read:

456.0635 Health care fraud; disqualification for license, certificate, or registration.—

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the candidate or applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the candidate or applicant has successfully completed a pretrial diversion or drug court program for that felony and provides proof that the plea has been withdrawn or the charges have been dismissed. Any such conviction or plea shall exclude the applicant or candidate from licensure, examination, certification, or registration unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application;

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the candidate or applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the candidate or applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application; or

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

This subsection does not apply to an applicant for initial licensure, certification, or registration who was arrested for

or charged with a felony specified in paragraph (a) or paragraph (b) before July 1, 2009.

(3) The department shall refuse to renew a license, certificate, or registration of any applicant if the applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the applicant is currently enrolled in a pretrial diversion or drug court program that allows the withdrawal of the plea for that felony upon successful completion of that program. Any such conviction or plea excludes the applicant from licensure renewal unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application.

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1, 2009, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application.

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years.

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application.

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

This subsection does not apply to an applicant for renewal of licensure, certification, or registration who was arrested for or charged with a felony specified in paragraph (a) or paragraph (b) before July 1, 2009.

Section 5. Paragraphs (i) and (hh) of subsection (1) of section 456.072, Florida Statutes, are amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(i) Except as provided in s. 465.016, failing to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board. However, a person who the licensee knows is unable to practice with reasonable skill

and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

(hh) Being terminated from an impaired practitioner program that ~~a treatment program for impaired practitioners, which~~ is overseen by a ~~an impaired practitioner~~ consultant as described in s. 456.076, for failure to comply, without good cause, with the terms of the monitoring or participant ~~treatment~~ contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

Section 6. Paragraph (f) of subsection (1) of section 457.109, Florida Statutes, is amended to read:

457.109 Disciplinary actions; grounds; action by the board.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department. However, a person who the licensee knows is unable to practice acupuncture with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 7. Paragraph (e) of subsection (1) of section 458.331, Florida Statutes, is amended to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(e) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows is unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department ~~A treatment provider approved pursuant to s. 456.076 shall provide the department or consultant with information in accordance with the requirements of s. 456.076(4), (5), (6), (7), and (9)~~.

Section 8. Paragraph (e) of subsection (1) of section 459.015, Florida Statutes, is amended to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(e) Failing to report to the department or the department's impaired professional consultant any person who the licensee or certificateholder knows is in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows is unable to practice osteopathic medicine with reasonable skill and safety to patients by reason of

illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department ~~A treatment provider, approved pursuant to s. 456.076, shall provide the department or consultant with information in accordance with the requirements of s. 456.076(4), (5), (6), (7), and (9)~~.

Section 9. Paragraph (g) of subsection (1) of section 460.413, Florida Statutes, is amended to read:

460.413 Grounds for disciplinary action; action by board or department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(g) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows is unable to practice chiropractic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 10. Paragraph (f) of subsection (1) of section 461.013, Florida Statutes, is amended to read:

461.013 Grounds for disciplinary action; action by the board; investigations by department.—

(1) The following acts constitute grounds for denial of a

license or disciplinary action, as specified in s. 456.072(2):

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows is unable to practice podiatric medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 11. Paragraph (f) of subsection (1) of section 462.14, Florida Statutes, is amended to read:

462.14 Grounds for disciplinary action; action by the department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department. However, a person who the licensee knows is unable to practice naturopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 12. Paragraph (l) of subsection (1) of section 463.016, Florida Statutes, is amended to read:

463.016 Grounds for disciplinary action; action by the

board.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(l) Willfully failing to report any person who the licensee knows is in violation of this chapter or of rules of the department or the board. However, a person who the licensee knows is unable to practice optometry with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 13. Paragraph (k) of subsection (1) of section 464.018, Florida Statutes, is amended to read:

464.018 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(k) Failing to report to the department any person who the licensee knows is in violation of this part or of the rules of the department or the board. However, a person who the licensee knows is unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department~~; however, if the licensee verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the licensee is required to report~~

~~such person only to an impaired professionals consultant~~.

Section 14. Paragraph (c) of subsection (2) of section 464.204, Florida Statutes, is amended to read:

464.204 Denial, suspension, or revocation of certification; disciplinary actions.—

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(c) Imposition of probation or restriction of certification, including conditions such as corrective actions as retraining or compliance with the department's impaired practitioner program operated by a consultant as described in s. 456.076 ~~an approved treatment program for impaired practitioners~~.

Section 15. Paragraph (o) of subsection (1) of section 465.016, Florida Statutes, is amended to read:

465.016 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(o) Failing to report to the department any licensee under chapter 458 or under chapter 459 who the pharmacist knows has violated the grounds for disciplinary action set out in the law under which that person is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part I of chapter 641, in which the pharmacist also provides services. However, a person who the licensee knows is unable to practice medicine or osteopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs,

narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 16. Paragraph (f) of subsection (1) of section 466.028, Florida Statutes, is amended to read:

466.028 Grounds for disciplinary action; action by the board.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(f) Failing to report to the department any person who the licensee knows, or has reason to believe, is clearly in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows, or has reason to believe, is clearly unable to practice her or his profession with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 17. Paragraph (h) of subsection (1) of section 467.203, Florida Statutes, is amended to read:

467.203 Disciplinary actions; penalties.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(h) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department. However, a person who the licensee knows is

unable to practice midwifery with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 18. Paragraph (f) of subsection (1) of section 468.217, Florida Statutes, is amended to read:

468.217 Denial of or refusal to renew license; suspension and revocation of license and other disciplinary measures.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(f) Failing to report to the department any person who the licensee knows is in violation of this part or of the rules of the department or of the board. However, a person who the licensee knows is unable to practice occupational therapy with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 19. Paragraph (n) of subsection (1) of section 468.3101, Florida Statutes, is amended to read:

468.3101 Disciplinary grounds and actions.—

(1) The department may make or require to be made any investigations, inspections, evaluations, and tests, and require the submission of any documents and statements, which it considers necessary to determine whether a violation of this

part has occurred. The following acts shall be grounds for disciplinary action as set forth in this section:

(n) Being terminated from an impaired practitioner program operated by a consultant as described in s. 456.076 for failure to comply, without good cause, with the terms of monitoring or a participant contract entered into by the licensee, or for not successfully completing a drug treatment or alcohol treatment program ~~Failing to comply with the recommendations of the department's impaired practitioner program for treatment, evaluation, or monitoring. A letter from the director of the impaired practitioner program that the certificateholder is not in compliance shall be considered conclusive proof under this part~~.

Section 20. Section 474.221, Florida Statutes, is amended to read:

474.221 Impaired practitioner provisions; applicability.—Notwithstanding the transfer of the Division of Medical Quality Assurance to the Department of Health or any other provision of law to the contrary, veterinarians licensed under this chapter shall be governed by the ~~treatment of~~ impaired practitioner program provisions of s. 456.076 as if they were under the jurisdiction of the Division of Medical Quality Assurance, except that for veterinarians the Department of Business and Professional Regulation shall, at its option, exercise any of the powers granted to the Department of Health by that section, and "board" shall mean board as defined in this chapter.

Section 21. Paragraph (o) of subsection (1) of section 483.825, Florida Statutes, is amended to read:

483.825 Grounds for disciplinary action.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(o) Failing to report to the department a person or other licensee who the licensee knows is in violation of this chapter or the rules of the department or board adopted hereunder. However, a person or other licensee who the licensee knows is unable to perform or report on clinical laboratory examinations with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 22. Section 456.0495, Florida Statutes, is created to read:

456.0495 Reporting adverse incidents occurring in out-of-hospital births.—

(1) A midwife licensed under chapter 467 or health care provider, as applicable, shall report any adverse incident, as defined by department rule, occurring as a result of an attempted or completed, planned birthing center or out-of-hospital birth, along with a medical summary of events, to the department within 15 days after the adverse incident occurs.

(2) The department shall adopt rules establishing guidelines for reporting adverse incidents, including, but not limited to:

(a) Maternal deaths that occur during delivery or within 42 days after delivery.

(b) Transfers of maternal patients to a hospital intensive

care unit.

(c) Maternal patients who experience hemorrhagic shock or who require a transfusion of more than 4 units of blood or blood products.

(d) Fetal or infant deaths, including stillbirths, associated with obstetrical deliveries.

(e) Transfers of infants to a neonatal intensive care unit due to a traumatic physical or neurological birth injury, including any degree of a brachial plexus injury.

(f) Transfers of infants to a neonatal intensive care unit within the first 72 hours after birth if the infant remains in such unit for more than 72 hours.

Section 23. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 876
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Young and others
SUBJECT:	Programs for Impaired Health Care Practitioners
DATE:	April 26, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Loe	Williams	AHS	**Recommend: Fav/CS**
3.	Loe	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 876 revises multiple statutory provisions relating to treatment programs for impaired health care providers. Primarily, it clarifies in law the roles and responsibilities of the parties involved in the program, including the Department of Health (DOH), consultant, evaluator, treatment provider, and impaired practitioner. The bill removes the current authority granted to the DOH to specify by rule the manner in which consultants must work with the DOH in intervening, evaluating, treating, monitoring, providing continuing care, or expelling a professional from the program. This will now be governed by a contract between the DOH and each consultant. The bill defines certain terms relating to impaired practitioner programs, and provides that a licensee may report an impaired practitioner to a consultant who operates an impaired practitioner program, rather than to the DOH, under certain circumstances.

The bill authorizes the DOH to issue or renew a license for an individual convicted of, or entered a plea of guilty or nolo contendere to, a disqualifying offense before July 1, 2009, when the licensure disqualification law was enacted. The bill authorizes the DOH to issue or renew the license of an individual convicted of, or enters a plea of guilty or nolo contendere to, a disqualifying felony if the applicant successfully completes a pretrial diversion program and the plea has been withdrawn or the charges have been dismissed.

The bill requires a licensed midwife or health care provider to report any adverse incident resulting from an attempted or completed planned birth performed at a birthing center or otherwise off the premises of a hospital, to the DOH within 15 days.

The bill has no impact on state revenues or expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Treatment Programs for Impaired Practitioners

Section 456.076, F.S., provides resources to assist licensees[1] in health care professions[2] who are impaired as a result of the misuse or abuse of alcohol or drugs, or as a result of any mental or physical condition, which could affect the licensees' ability to practice with skill and safety.[3] For professions that do not have impaired practitioner programs provided for them in their practice acts, the DOH designate**s** approved impaired practitioner programs**.**

The DOH is required to retain one or more impaired practitioner consultants licensed under the jurisdiction of the Division of Medical Quality Assurance (MQA) within the DOH and who is a licensed physician or nurse; or an entity that employs a medical director who is a licensed physician, or an executive director who is a licensed nurse.

There are currently two department-approved treatment consultants for the impaired practitioner programs in Florida: the Professionals Resource Network (PRN) and the Intervention Project for Nurses (IPN).[4]

The PRN provides evaluations, treatment referrals, and monitoring for all health professions, except nursing and certified nursing assistants.[5,6] The IPN provides these services to nurses and certified nursing assistants.[7] These consultants initiate interventions, recommend evaluations, and refer impaired licensees to treatment programs or treatment providers approved by the DOH, and monitor the progress of impaired licensees. The PRN and IPN do not provide medical services. They act as liaisons between the DOH and approved treatment programs and providers. The DOH is not responsible for paying for the care provided by approved treatment providers or a consultant.

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[1] Licensee is defined in s. 456.001(6), F.S., to include any permit, registration, certificate, or license, including a provisional license, issued by the DOH.
[2] Profession is defined in s. 456.001(7), F.S., to include any activity, occupation, profession, or vocation regulated by the DOH in the Division of MQA. *See also* s. 20.43(1)(g), F.S.
[3] The provisions of s. 456.076, F.S., also apply to veterinarians under s. 474.221, F.S., and radiological personnel under s. 468.315, F.S.
[4] *See* Professionals Resource Network, *available at* http://www.flprn.org/ *and* http://www.ipnfl.org/ (last visited Mar. 7, 2017).
[5] Professionals Resource Network, *About Us, available at* http://www.flprn.org/about (last visited Mar. 9, 2017).
[6] The PRN also provides evaluations, treatment referrals, and monitoring for harbor pilots and deputy harbor pilots regulated by the Board of Pilot Commissioners in the Department of Business and Professional Regulation. *See* s. 310.102, F.S.
[7] Intervention Project for Nurses, *IPN History, available at* http://www.ipnfl.org/ipnhistory.html (last visited Mar. 9, 2017)

A medical school, nursing program, or other health professional school may also contract with the PRN or IPN to provide services to an enrolled student if the student is allegedly impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition.[8]

The IPN and PRN, if requested, also serve as consultants to the DOH in cases that come before the practice boards or the DOH, including credentialing and monitoring of applicants, and assisting in the development of plans for licensee practice in a structured environment. They must also be available to testify in administrative hearings and other legal proceedings on behalf of the DOH.

Whenever a consultant, licensee, or approved treatment provider makes a disclosure of confidential information regarding a licensee to the DOH pursuant to law, that individual is not subject to civil liability for such disclosure or its consequences. If the contract with the consultant contains specified provisions, the consultant, the consultant's officers and employees, and those acting at the direction of the consultant are considered agents of the DOH for purposes of s. 768.28, F.S., relating to sovereign immunity.

The Department of Financial Services is required to defend the consultant, its officers and employees, and those acting at the direction of the consultant for the limited purpose of an emergency intervention when the consultant is unable to perform the intervention, from any legal action brought as a result of the consultant's duties under the DOH contract.[9]

When the DOH receives a legally sufficient[10] complaint alleging that a licensee is impaired, and no other complaint against the licensee exists, the reporting of such information does not constitute grounds for discipline if certain conditions are met.[11] Those conditions include findings by the appropriate board's probable cause panel,[12] or the DOH, if there is no board, that the licensee:

- Acknowledged the impairment problem;
- Enrolled in an appropriate, approved treatment program;
- Voluntarily withdrew from practice, or limited the scope of his or her practice, until he or she successfully completed the treatment program; and
- Released his or her medical records to the consultant.

If the DOH has not received a legally sufficient complaint, other than impairment, and the licensee agrees to withdraw from practice until such time as the consultant determines the

[8] Section 456.076(1)(c)2., F.S.
[9] Section 456.076(8), F.S.
[10] A complaint is legally sufficient if it contains ultimate facts that show the occurrence of a violation of a practice act, ch. 456, F.S., or a rule adopted by the DOH or a board. *See* s. 456.073(1), F.S.
[11] Section 456.076(4)(a), F.S.
[12] A probable cause panel is a panel designated by rule of each regulatory board that reviews investigative information related to a complaint to determine whether probable cause exists that a health care practitioner violated statutes governing the practice of the licensee's profession. If probable cause exists, the probable cause panel will direct DOH to file a formal complaint against the licensee. *See* s. 456.073(4), F.S.

licensee has satisfactorily completed an evaluation and approved treatment program, if appropriate, neither the probable cause panel nor the DOH will become involved in the case.[13]

If an impaired licensee fails to complete, or satisfactorily progress in, a treatment program, the consultant must follow specific procedures set forth in the contract with the DOH, up to and including, sending notification to the DOH of the dismissal of a licensee from the program and for the DOH to initiate disciplinary action.[14] When a licensee is dismissed from a treatment program, the consultant provides an evaluation of the licensee's impairment condition to the DOH. The evaluation is used by the DOH to determine if the licensee poses an immediate and serious danger to the public for the purpose of issuing an emergency order restricting or suspending his or her license to practice.

A licensee is required to report to the appropriate board or the DOH, if there is no board, any person who the licensee knows is in violation of ch. 456, F.S., the chapter regulating the alleged violator, or the rules of the department or the board.[15] This requirement also includes any person unable to practice with reasonable skill and safety to patients due to the misuse or abuse of alcohol or drugs, or as a result of any mental or physical condition.

Section 401.411, F.S., sets forth disciplinary guidelines for the DOH to take action against emergency medical technicians (EMTs), paramedics, and emergency medical services (EMS) personnel. The guidelines include a penalty for failure to report any person known to be in violation of s. 401.411, F.S.[16] The guidelines also include a penalty for practicing as an EMT, paramedic, or EMS personnel without reasonable skill and without regard for the safety of the public because of illness, drunkenness, or the use of drugs, narcotics, chemicals, or any other substance, or as a result of any mental or physical condition.[17]

Disqualification from Licensure

In 2009, a law was enacted that prohibited the DOH from issuing or renewing the license of an individual who was convicted of, or entered a plea of nolo contendere to, regardless of adjudication of certain felonies related to Medicaid, Medicare, fraud, or controlled substances.[18] In 2012, the law was amended to create a tiered system of exclusions based on the severity of the crime and the amount of time elapsed between the crime and the application for licensure and provided an exception.[19]

Current law prohibits a board or the DOH, if there is no board, from allowing a person to sit for an examination or issue a license, certificate, or registration, if the applicant has been convicted of a felony under ch. 409, F.S., relating to social and economic programs, including Medicaid; ch. 817, F.S., relating to fraud; or ch. 893, F.S., relating to controlled substances; or a similar

[13] Section 456.076(4)(b), F.S.
[14] *See* s. 456.072(1)(hh), F.S.
[15] Section 456.072(1)(i), F.S.
[16] Section 401.411(1)(l), F.S.
[17] Section 401.411(1)(k), F.S.
[18] Chapter 2009-223, Laws of Florida, codified at s. 456.0635, F.S. If the sentences or any probation for a conviction ended more than 15 years before the date of application, DOH was not required to deny the license.
[19] Chapter 2012-64, Laws of Florida.

felony offense committed in another jurisdiction unless the individual successfully completed a drug court program for the felony and the plea was withdrawn or the charges were dismissed. A board or the DOH, if there is no board, may allow an applicant to sit for an examination or issue a license, certificate, or registration if the sentence or any related period of probation for a conviction ended:

- More than 15 years before the date of application for felonies of the first or second degree;
- More than 10 years before the date of application for felonies of the third degree, except for those under s. 893.13(6)(a), F.S.;[20] or
- More than 5 years before the date of application for felonies of the third degree under s. 893.13(6)(a), F.S.

These exclusions also apply to an applicant who:

- Has been convicted of, or entered a plea of guilty or no contest to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970 or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such convictions or plea ended more than 15 years before the date of application; or
- Is listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

Additionally, a board or the DOH is prohibited from renewing a license, certification, or registration if the applicant or candidate falls under the same restrictions established for initial licensure, certification, or registration. The same exceptions to the restrictions on initial licensure, certification, or registration apply for renewal applications; however, the renewal applicant or candidate must show that he or she is currently enrolled in a drug court program, rather than showing successful completion, as required of initial applicants. This disqualification from licensure – for felony convictions or pleas of guilty or no contest of the specified violations – did not apply until 2016 to applicants for initial licensure or certification, who were enrolled in a recognized training or education program as of July 1, 2009, and who applied for initial licensure after July 1, 2012. In 2016, this exception to the disqualification was repealed because individuals who were denied renewal based on one of the offenses, regardless of the date it was committed, were able to reapply and obtain new licenses based on the exemption.

Midwifery in Florida

The practice of midwifery in Florida provides expectant mothers and their families the freedom to choose the manner, cost, and setting for giving birth. The DOH regulates the practice of midwifery to ensure the proper care of mothers and their infants throughout the prenatal, intrapartum, and postpartum periods of pregnancy, labor, and delivery.[21] Accordingly, individuals wishing to practice midwifery in this state must be licensed by the DOH.[22]

[20] Section 893.13(6)(a), F.S., makes it unlawful for a person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription, or order, of a practitioner while acting the course of his or her professional practice; or to be in actual or constructive possession of a controlled substance except as otherwise authorized under ch. 893, F.S. Any person who violates this provision commits a felony in the third degree.
[21] Chapter 467, F.S.
[22] See sections 467.006 and 467.011, F.S.

A midwife's scope of practice includes providing care for only those mothers who are expected to have a normal pregnancy, labor, and delivery. A midwife may provide collaborative prenatal and postpartum care to pregnant women not at low risk in their pregnancy, labor, and delivery, within a written protocol from a physician[23] who maintains supervision of the midwife for directing the specific course of medical treatment. [24] Midwives are required to keep records of each patient served for at least five years. A midwife must submit a completed birth certificate for each birth attended to the registrar of vital statistics within five days following birth; and report all maternal deaths, newborn deaths, and stillbirths to the medical examiner immediately.[25] There is currently no requirement for midwives or other health professionals to report adverse incidents that occur within the midwives' scope of practice to the DOH.

Mandatory Reporting of Adverse Incidents

Under current law, certain professions, organizations, and facilities licensed or certified by the DOH and the Agency for Health Care Administration (AHCA) are required to report adverse incidents to the DOH or AHCA[26] within a specified period.[27]

The term "adverse incident" is defined according to the specific statute or rule governing the particular profession, organization, or facility,[28] but generally means an event in which the professional, organization, or facility personnel could exercise control, rather than as a result of the condition of the patient or resident for which such intervention occurred, and which results in death or serious injury[29] to the patient or resident.

III. Effect of Proposed Changes:

Section 1 amends s. 456.076(1), F.S., to define the terms: "impaired practitioner," "impairment," "inability to progress," "material noncompliance," and "practitioner." Defining these terms provides clarification to the DOH for contractual purposes and in legal proceedings.

This section deletes the provisions authorizing the DOH to adopt, by rule, the manner in which consultants work with the DOH in interventions, in evaluating and treating professionals, in providing and monitoring continued care of impaired professionals, and in expelling professionals from the program.

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[23] Licensed under ch. 458 or 459, F.S.
[24] Section 467.015, F.S.
[25] Section 467.019, F.S.
[26] Section 395.0197, F.S., (hospitals and ambulatory surgical centers); section 400.147, F.S., (nursing homes); s. 429.23, F.S., (assisted living facilities); sections 458.351 and 459.026, F.S. (physicians and physician assistants); s. 466.017, F.S., (dentists and dental hygienists); and s. 641.55, F.S. (health maintenance organizations and prepaid health clinics).
[27] *Id.* All of these professions, organizations, and facilities – with the exception of dentists and dental hygienists, health maintenance organizations (HMOs), and prepaid health clinics – are required to report an adverse incident to DOH or AHCA within 15 days. HMOs and prepaid health clinics are required to report the adverse incident to the AHCA within 3 working days after its first occurrence, and must submit a more detailed report within 10 days after the first report. Pursuant to Rule 64B5-14.006, F.A.C., dentists and dental hygienists are required to report the adverse occurrence that occurs in the dentist's outpatient facility within 48 hours, and must submit a more detailed report within 30 days, of its first occurrence.
[28] *Id.*
[29] Depending on the profession, organization, or facility, serious injury includes brain or spinal damage; permanent disfigurement; limitation of neurological, physical, or sensory function; or a fracture or dislocation of bones or joints.

This section requires that, if the DOH elects to retain one or more consultants to operate its impaired practitioner program, the terms and conditions of the impaired practitioner programs must be specified by the contract between the DOH and consultant, which must contain the following agreements:[30]

- Accept referrals;
- Arrange for evaluation and treatment of impaired practitioners when the consultant deems it necessary;
- Monitor the impaired practitioner's recovery process until monitoring is no longer needed or the practitioner is terminated for material non-compliance[31] or an inability to progress,[32] and
- Not directly evaluate, treat, or otherwise provide patient care to a practitioner in the program.

This section requires the consultant to execute a participant contract with an impaired practitioner that addresses, among other things, the terms of the monitoring. The consultant may modify the terms of the monitoring if the consultant concludes that extended, additional, or amended terms are needed to protect the health, safety, and welfare of the public.

This section provides that when the DOH receives a legally sufficient complaint alleging that a practitioner has an impairment, and no complaint exists other than impairment, the DOH must refer the practitioner to the consultant, along with all information in the DOH's possession relating to the impairment. The impairment does not constitute grounds for discipline pursuant to s. 456.072, F.S., or the applicable practice act, if the practitioner:

- Has acknowledged the impairment;
- Becomes a participant in an impaired practitioner program and successfully completes a participant contract;
- Has voluntarily withdrawn from practice, or has limited the scope of his or her practice, if required by the consultant;
- Has provided to the consultant, or has authorized the consultant to obtain, all records and information relating to the impairment from any source and all other medical records of the practitioner requested by the consultant; and
- Has authorized the consultant, in the event of the practitioner's termination from the impaired practitioner program, to report the termination to the DOH and provide the department with copies of all information in the consultant's possession relating to the practitioner.[33]

This section provides an exception to the mandatory referral of practitioners by the DOH to the consultant for EMTs, paramedics, and EMS personnel certified by the DOH and employed by a governmental entity if the practitioner is under a referral to an employee assistance program offered by his or her employer through the governmental entity.[34] If the practitioner fails to

[30] See s. 456.076(3) F.S., of the bill.
[31] The bill defines "material noncompliance" to mean an act or omission by a participant in violation of his or her participant contract as determined by the department or consultant.
[32] "Inability to progress" means a determination by a consultant based on a participant's response to treatment and prognosis that the participant is unable to safely practice despite compliance with the treatment requirement and his or her participant contract.
[33] See s. 456.076(10)(a), F.S., of the bill.
[34] Section 70.001(3)(c), F.S., defines "governmental entity" as an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that

complete the employee assistance program or is terminated by his or her employer, the employer is required to immediately notify the DOH, which must then refer the practitioner to the consultant pursuant to the terms of the impaired practitioner program and contract.

Under current law, probable cause panels reviewing complaints against a licensee may work directly with a consultant to determine if an impairment played a role in the complaint against a licensee, and what, if any, disciplinary action needs to be taken. This section requires the consultant to assist the DOH and licensure boards in matters involving impaired practitioners, including a determination of whether a practitioner is in fact impaired, rather than this process taking place before probable cause panels.

The mandatory requirement that the practitioner release all records and information relating to the impairment from any source, and all other medical records of the practitioner requested by the consultant, may be broader than the release requirement under current law.[35] Current law requires the practitioner to authorize the release of all records of evaluations, diagnoses and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant.

This section modifies when a consultant must report an impaired practitioner in a treatment program to the DOH. Unless authorized by the participant, the consultant may not provide information to the DOH relating to a self-referring participant if the consultant has no knowledge of a pending DOH investigation, complaint, or disciplinary action against the participant, and if the participant is in compliance with the terms of the impaired practitioner program and contract.[36]

When a referral or participant is terminated from the impaired practitioner program for a material noncompliance with a participant contract, an inability to progress, or any other reason than completion, the consultant is required to disclose all information in the consultant's possession relating to the practitioner to the DOH. Such disclosure constitutes a complaint that the DOH will then investigate. Whenever the consultant concludes that impairment affects a practitioner's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, the

independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority.

[35] For example, in 2016, the Legislature enacted Senate Bill 964 authorizing, among other things, an impaired practitioner consultant indirect access to the Florida Prescription Drug Monitoring Program (PDMP) for the purpose of reviewing the database information of an impaired practitioner program participant or a referral who has separately agreed in writing to the consultant's access to and review of such information. *See* ss. 893.055(7)(c)5 and 893.0551(3)(h), F.S. This potentially creates a coercive method of requiring the practitioner to give up his or her PDMP records to the consultant, and by extension, to the DOH for disciplinary action. In order to attempt to avoid discipline for the practitioner, the bill requires the practitioner to release any information that relates to the practitioner's impairment, and any other records the consultant requests. The PDMP records would be medical records related to the impairment that the consultant would request the practitioner to release. Were the practitioner then to be terminated from the impaired practitioner program for any reason, the consultant would be required to turn those records over to the DOH. The DOH does not have authority to access these PDMP records, either directly or indirectly.

[36] See s. 465.076(9)(b), F.S., of the bill

consultant is required to immediately communicate such conclusion to the DOH and provide all information in the consultant's possession relating to the practitioner to the DOH.[37]

A consultant may request of an approved evaluator, treatment program, or treatment provider, with the authorization of the practitioner when required by law, all information in its possession regarding a referral or participant. Failure to provide such information to the consultant is grounds for withdrawal of approval by the DOH of such evaluator, treatment program, or treatment provider.[38]

The confidential or exempt information obtained by the consultant retains its confidential or exempt status.[39] However, the bill does not provide any protection for the information once sent to the DOH, or obtained by an evaluator or treatment provider, from a public records request.

This section protects the consultant, or a director, officer, employee, or agent of a consultant, from financial liability or any other cause of action for damages related to making a disclosure, or for any action or omission, against a license, registration, or certification.[40] Under current law a consultant, the consultant's officers and employees, and those acting at the direction of the consultant are considered agents of the DOH, and have sovereign immunity while acting within the course and scope of their contract.[41] The bill extends that protection to include directors, officers, employees or agents of a consultant.[42] The provisions of s. 766.101, F.S., apply to any consultant and the consultant's directors, officers, employees, or agents in regards to providing information relating to a participant to a medical review committee if the participant authorizes such disclosure.[43]

This section directs the Department of Financial Services to defend the consultant, consultant's directors, officers, employees and agents against any claim, suit, action, or proceeding for injunction, affirmative, or declaratory relief, as the result of any action or omission relating to the impaired practitioner program.[44]

This section provides that, if another state agency retains a consultant under contract with the DOH, the provisions of the contract between the DOH and the consultant applies to the consultant's operation of an impaired practitioner program for that agency.

A consultant may disclose to a referral or participant, or to the legal representative of the referral or participant, the documents, records, or other information from the consultant's file, including information received by the consultant from other sources, and information on the terms required for the referral's or participant's monitoring contract, the referral's or participant's progress or inability to progress, the referral's or participant's discharge or termination, information supporting the conclusion of material noncompliance, or any other information required by law.

[37] See s. 456.076(11)(b), F.S., of the bill.
[38] See s. 456.076(11)(a), F.S., of the bill.
[39] See s 456.016(2), F.S., of the bill.
[40] See s. 456.076(13), F.S., of the bill.
[41] See s. 456.076(15)(a), F.S., of the bill.
[42] *Supra* note 38.
[43] See s. 456.076(14), F.S., of the bill.
[44] See s. 456.076(15)(b), F.S., of the bill.

If a consultant discloses information to the DOH in accordance with this program, a referral or participant, or his or her legal representative, may obtain a complete copy of the consultant's file from the consultant or the DOH.[45]

Section 2 amends s. 401.411(1)(l), F.S., to authorize emergency medical personnel that become aware of an individual in their profession that is impaired due to illness, the use of alcohol or drugs, or as a result of a mental or physical condition, to report the individual to the consultant rather than the DOH, as required under current law, without facing disciplinary action.

Section 4 amends s. 456.0635(2)-(3), F.S., to exempt individuals convicted of, or entered a plea of guilty or nolo contendere to, disqualifying offenses prior to July 1, 2009, from being disqualified for licensure, preventing retroactive applicability. This section also authorizes the DOH to allow an individual to sit for an examination or issue or renew a license, certificate, or registration for a person who is convicted of, or enters a plea of guilty or nolo contendere, to a disqualifying felony if the applicant successfully completes a pretrial diversion program and provides proof that the plea has been withdrawn or the charges have been dismissed.

Sections 5 through 13, 15 through 18, 20, and 21 amend s. 456.072, F.S., and various statutes,[46] to authorize a practitioner to report another impaired professional to a consultant, rather than the DOH or applicable regulatory board, without facing disciplinary action.

Section 22 requires a licensed midwife or health care provider to report any adverse incident resulting from an attempted or completed planned birth performed at a birthing center or otherwise off the premises of a hospital, to the DOH within 15 days. This section requires the DOH to adopt rules establishing guidelines for reporting adverse incidents, which shall at a minimum include:

- Intrapartum and postpartum[47] maternal deaths;
- Transfers of maternal or infant patients to a hospital intensive care unit (ICU) under certain conditions;[48]
- Maternal patients who experience hemorrhagic shock or require a blood transfusion;[49] and
- Fetal or infant deaths, including stillbirths,[50] associated with obstetrical deliveries.

Section 23 provides for the bill to take effect upon becoming a law.

[45] See s. 456.076, (17), F.S., of the bill.
[46] Section 457.109, F.S., (acupuncture); s. 458.331, F.S., (medical practice); s. 459.015, F.S., (osteopathic medicine); s. 460.413, F.S., (chiropractic medicine); s. 461.013, F.S., (podiatric medicine); s. 462.14, F.S., (naturopathy); s. 463.016, F.S., (optometry); s. 464.018, F.S., (nursing); s. 465.016, F.S., (pharmacy); s. 466.028, F.S., (dentistry, dental hygiene, and dental laboratories); s. 467.203, F.S., (midwifery); s. 468.217, F.S.; (occupational therapy); s. 474.221, F.S., (veterinary medicine); and s. 483.825, F.S. (clinical laboratory personnel).
[47] Section 456.0495(2)(a), F.S., of the bill, specifies up to 42 days postpartum.
[48] Section 456.0495(2)(e)-(f), F.S., of the bill, specifies transfers of infants to a neonatal ICU due to a traumatic physical or neurological birth injury, including any degree of a brachial plexus injury, or within the first 72 hours after birth if the infant remains in the ICU for more than 72 hours.
[49] Section 456.0495(2)(e)-(f), F.S., of the bill, specifies transfusions of more than four units of blood or blood products.
[50] Section 467.003(14), F.S., defines "stillbirth" to mean the death of a fetus of more than 20 weeks' gestation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill protects the confidential or exempt information obtained by the consultant from a public records request; but the bill does not protect any of the information sent to the DOH, or obtained by an evaluator or treatment provider, from a public records request.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill's definitions of, "inability to progress," and "material noncompliance," may create due process issues as conclusive presumptions.[51]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Due to the expansion of individuals who are afforded a defense by the Department of Financial Services for claims, actions, suits, or proceedings, there may be an insignificant indeterminate negative fiscal impact on the Risk Management Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[51] A "conclusive presumption" is one in which proof of a basic fact renders the existence of the presumed fact conclusive and irrevocable regardless of any evidence to the contrary. Black's Law Dictionary, 6th Ed., 1992.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.076, 401.411, 455.227, 456.0635, 456.072, 457.109, 458.331, 459.015, 460.413, 461.013, 462.14, 463.016, 464.018, 464.204, 465.016, 466.028, 467.203, 468.217, 468.3101, 474.221, and 483.825.

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 25, 2017:
The committee substitute:

- Requires licensed midwives and health care providers to report adverse incidents resulting from an attempted or completed planned birth within 15 days to the DOH.
- Prohibits the DOH from initially referring EMTs, paramedics, and EMS personnel to an impaired practitioner program consultant if certain conditions are met.
- Clarifies provisions relating to disqualification for licensure.

CS by Health Policy on March 14, 2017:
The CS:

- Amends the definition of referral to make clear that it includes self-referrals, referrals of one practitioner by another, and referrals reported by the DOH.
- Condenses and reorganizes the section which provides for contract terms and conditions with a consultant, but makes no substantive changes.
- Changes the terms "certify" and "decline to certify," to "approve" and "deny," respectively, to more accurately describe the actions.
- Clarifies that the consultant is not required to disclose information to the DOH on self- referring practitioners if the consultant has no knowledge of a complaint.
- Reinstates and amends the language that specifies that the consultant is an agent of the state for purposes of sovereign immunity when acting pursuant to its contract.
- Authorizes disclosure to the referral, participant or the legal representative of either, the documents and information received by the consultant pertaining to and supporting the participant's discharge or termination from an impaired practitioner program; and any information the consultant discloses to the DOH.
- Amends the provisions relating to disqualification for licensure, and provides an exception for pretrial diversion.

B. Amendments:

None.

By the Committee on Health Policy; and Senators Young, Bean, and Rouson

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A bill to be entitled

An act relating to programs for impaired health care practitioners; amending s. 456.076, F.S.; revising provisions related to impaired practitioner programs; providing definitions; deleting a requirement that the Department of Health designate approved programs by rule; deleting a requirement authorizing the department to adopt by rule the manner in which consultants work with the department in intervention, in evaluating and treating professionals, in providing and monitoring continued care of impaired professionals, and in expelling professionals from the program; authorizing, instead of requiring, the department to retain one or more consultants to operate its impaired practitioner program; requiring the department to establish the terms and conditions of the program by contract; providing contract terms; requiring consultants to establish the terms of monitoring impaired practitioners; authorizing consultants to consider the recommendations of certain persons in establishing the terms of monitoring; authorizing consultants to modify monitoring terms to protect the health, safety, and welfare of the public; requiring consultants to assist the department and licensure boards on matters relating to impaired practitioners; making technical changes; requiring the department to refer practitioners to consultants under certain circumstances; authorizing consultants to withhold certain information about self-reporting

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participants from the department under certain circumstances to encourage self-reporting; requiring consultants to disclose all information relating to practitioners who are terminated from the program for material noncompliance; providing that all information obtained by a consultant retains its confidential or exempt status; providing that consultants, and certain agents of consultants, may not be held liable financially or have a cause of action for damages brought against them for disclosing certain information or for any other act or omission relating to the program; authorizing consultants to contract with a school or program to provide services to certain students; amending s. 401.411, F.S.; providing that an impaired practitioner may be reported to a consultant rather than the department under certain circumstances; amending s. 455.227, F.S.; conforming provisions to changes made by the act; amending s. 456.0635, F.S.; providing that, under certain circumstances, a board or, if there is no board, the department, is not required to refuse to admit certain candidates to an examination, to issue a license, certificate, or registration to certain applicants, or to renew a license, certificate, or registration of certain applicants if they have successfully completed a pretrial diversion program; providing applicability; amending ss. 456.072, 457.109, 458.331, 459.015, 460.413, 461.013, 462.14, 463.016, and 464.018, F.S.; providing that an impaired practitioner may be

reported to a consultant rather than the department under certain circumstances; amending s. 464.204, F.S.; conforming provisions to changes made by the act; amending ss. 465.016, 466.028, 467.203, 468.217, and 468.3101, F.S.; providing that an impaired practitioner may be reported to a consultant rather than the department under certain circumstances; amending s. 474.221, F.S.; conforming provisions to changes made by the act; amending s. 483.825, F.S.; providing that certain persons may be reported to a consultant rather than the department under certain circumstances; providing an effective date.

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

Section 1. Section 456.076, Florida Statutes, is amended to read:

456.076 Impaired practitioner programs ~~Treatment programs for impaired practitioners~~.—

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

(a) "Consultant" means the individual or entity who operates an approved impaired practitioner program pursuant to a contract with the department and who is retained by the department as provided in subsection (2).

(b) "Evaluator" means a state-licensed or nationally certified individual who has been approved by a consultant or the department, who has completed an evaluator training program established by the consultant, and who is therefore authorized to evaluate practitioners as part of an impaired practitioner

program.

(c) "Impaired practitioner" means a practitioner with an impairment.

(d) "Impaired practitioner program" means a program established by the department by contract with one or more consultants to serve impaired and potentially impaired practitioners for the protection of the health, safety, and welfare of the public.

(e) "Impairment" means a potentially impairing health condition that is the result of the misuse or abuse of alcohol, drugs, or both, or a mental or physical condition that could affect a practitioner's ability to practice with skill and safety.

(f) "Inability to progress" means a determination by a consultant based on a participant's response to treatment and prognosis that the participant is unable to safely practice despite compliance with treatment requirements and his or her participant contract.

(g) "Material noncompliance" means an act or omission by a participant in violation of his or her participant contract as determined by the department or consultant.

(h) "Participant" means a practitioner who is participating in the impaired practitioner program by having entered into a participant contract. A practitioner ceases to be a participant when the participant contract is successfully completed or is terminated for any reason.

(i) "Participant contract" means a formal written document outlining the requirements established by a consultant for a participant to successfully complete the impaired practitioner

program, including the participant's monitoring plan.

(j) "Practitioner" means a person licensed, registered, certified, or regulated by the department under part III of chapter 401; chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; or an applicant for a license, registration, or certification under the same laws.

(k) "Referral" means a practitioner who has been referred, either as a self-referral or otherwise, or reported to a consultant for impaired practitioner program services, but who is not under a participant contract.

(l) "Treatment program" means a department- or consultant-approved residential, intensive outpatient, partial hospitalization or other program through which an impaired practitioner is treated based on the impaired practitioner's diagnosis and the treatment plan approved by the consultant.

(m) "Treatment provider" means a department- or consultant-approved state-licensed or nationally certified individual who provides treatment to an impaired practitioner based on the practitioner's individual diagnosis and a treatment plan approved by the consultant ~~For professions that do not have impaired practitioner programs provided for in their practice acts, the department shall, by rule, designate approved impaired practitioner programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers. The rules may specify the manner in which~~

~~the consultant, retained as set forth in subsection (2), works with the department in intervention, requirements for evaluating and treating a professional, requirements for continued care of impaired professionals by approved treatment providers, continued monitoring by the consultant of the care provided by approved treatment providers regarding the professionals under their care, and requirements related to the consultant's expulsion of professionals from the program~~.

(2)~~(a)~~ The department may ~~shall~~ retain one or more ~~impaired practitioner~~ consultants to operate its impaired practitioner program. Each consultant ~~who are each licensees under the jurisdiction of the Division of Medical Quality Assurance within the department and who~~ must be:

(a)~~1.~~ A practitioner ~~or recovered practitioner~~ licensed under chapter 458, chapter 459, or part I of chapter 464; or

(b)~~2.~~ An entity that employs:

1.~~a.~~ A medical director who is ~~must be a practitioner or recovered practitioner~~ licensed under chapter 458 or chapter 459; or

2.~~b.~~ An executive director who is ~~must be a registered nurse or a recovered registered nurse~~ licensed under part I of chapter 464.

(3) The terms and conditions of the impaired practitioner program must be established by the department by contract with a consultant for the protection of the health, safety, and welfare of the public and must provide, at a minimum, that the consultant:

(a) Accepts referrals;

(b) Arranges for the evaluation and treatment of impaired

practitioners by a treatment provider, when the consultant deems the evaluation and treatment necessary;

(c) Monitors the recovery progress and status of impaired practitioners to ensure that such practitioners are able to practice their profession with skill and safety. Such monitoring must continue until the consultant or department concludes that monitoring by the consultant is no longer required for the protection of the public or until the practitioner's participation in the program is terminated for material noncompliance or inability to progress; and

(d) Does not directly evaluate, treat, or otherwise provide patient care to a practitioner in the operation of the impaired practitioner program.

(4) The department shall specify, in its contract with each consultant, the types of licenses, registrations, or certifications of the practitioners to be served by that consultant.

(5) A consultant shall enter into a participant contract with an impaired practitioner and shall establish the terms of monitoring and shall include the terms in a participant contract. In establishing the terms of monitoring, the consultant may consider the recommendations of one or more approved evaluators, treatment programs, or treatment providers. A consultant may modify the terms of monitoring if the consultant concludes, through the course of monitoring, that extended, additional, or amended terms of monitoring are required for the protection of the health, safety, and welfare of the public.

(6) ~~(b)~~ A ~~An entity retained as an impaired practitioner~~

consultant ~~under this section which employs a medical director or an executive director~~ is not required to be licensed as a substance abuse provider or mental health treatment provider under chapter 394, chapter 395, or chapter 397 for purposes of providing services under this program.

(7) ~~(c) 1.~~ Each ~~The~~ consultant shall assist the department and licensure boards on matters of impaired practitioners, including the determination of ~~probable cause panel and the department in carrying out the responsibilities of this section. This includes working with department investigators to determine~~ whether a practitioner is, in fact, impaired, as specified in the consultant's contract with the department.

~~2. The consultant may contract with a school or program to provide services to a student enrolled for the purpose of preparing for licensure as a health care practitioner as defined in this chapter or as a veterinarian under chapter 474 if the student is allegedly impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition. The department is not responsible for paying for the care provided by approved treatment providers or a consultant.~~

~~(d) A medical school accredited by the Liaison Committee on Medical Education or the Commission on Osteopathic College Accreditation, or another school providing for the education of students enrolled in preparation for licensure as a health care practitioner as defined in this chapter or a veterinarian under chapter 474 which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for~~

~~disciplinary actions that adversely affect the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.~~

(8) ~~(3)~~ Before issuing an approval of, or intent to deny, an application for licensure, each board and profession within the Division of Medical Quality Assurance may delegate to its chair or other designee its authority to determine~~, before certifying or declining to certify an application for licensure to the department,~~ that an applicant for licensure under its jurisdiction may have an impairment ~~be impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition that could affect the applicant's ability to practice with skill and safety~~. Upon such determination, the chair or other designee may refer the applicant to the consultant to facilitate ~~for~~ an evaluation before the board issues an approval of, ~~certifies~~ or intent to deny, ~~declines to certify~~ his or her application ~~to the department~~. If the applicant agrees to be evaluated ~~by the consultant~~, the department's deadline for approving or denying the application pursuant to s. 120.60(1) is tolled until the evaluation is completed and the result of the evaluation and recommendation ~~by the consultant~~ is communicated to the board by the consultant. If the applicant declines to be evaluated ~~by the~~

~~consultant~~, the board shall issue an approval of, or intent to deny, ~~certify or decline to certify~~ the applicant's application ~~to the department~~ notwithstanding the lack of an evaluation and recommendation by the consultant.

(9)(a) ~~(4)(a)~~ When ~~Whenever~~ the department receives a ~~written or oral~~ legally sufficient complaint alleging that a practitioner has an impairment ~~licensee under the jurisdiction of the Division of Medical Quality Assurance within the department is impaired as a result of the misuse or abuse of alcohol or drugs, or both, or due to a mental or physical condition which could affect the licensee's ability to practice with skill and safety,~~ and no complaint exists against the practitioner ~~licensee~~ other than impairment ~~exists~~, the department shall refer the practitioner to the consultant, along with all information in the department's possession relating to the impairment. The impairment does ~~reporting of such information shall~~ not constitute grounds for discipline pursuant to s. 456.072 or ~~the corresponding grounds for discipline within~~ the applicable practice act if ~~the probable cause panel of the appropriate board, or the department when there is no board, finds~~:

1. The practitioner ~~licensee~~ has acknowledged the impairment; ~~problem.~~

2. The practitioner becomes a participant ~~licensee has voluntarily enrolled~~ in an impaired practitioner program and successfully completes a participant contract under terms established by the consultant; ~~appropriate, approved treatment program.~~

3. The practitioner ~~licensee~~ has voluntarily withdrawn from

practice or has limited the scope of his or her practice if ~~as~~ required by the consultant;~~, in each case, until such time as the panel, or the department when there is no board, is satisfied the licensee has successfully completed an approved treatment program.~~

4. The practitioner ~~licensee~~ has provided to the consultant, or has authorized the consultant to obtain, all records and information relating to the impairment from any source and all other medical records of the practitioner requested by the consultant; and ~~executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall make no copies or reports of records that do not regard the issue of the licensee's impairment and his or her participation in a treatment program.~~

5. The practitioner has authorized the consultant, in the event of the practitioner's termination from the impaired practitioner program, to report the termination to the department and provide the department with copies of all information in the consultant's possession relating to the practitioner.

(b) To encourage practitioners who are or may be impaired to voluntarily self-refer to a consultant, the consultant may not provide information to the department relating to a self-referring participant if the consultant has no knowledge of a pending department investigation, complaint, or disciplinary action against the participant and if the participant is in compliance and making progress with the terms of the impaired

practitioner program and contract, unless authorized by the participant ~~If, however, the department has not received a legally sufficient complaint and the licensee agrees to withdraw from practice until such time as the consultant determines the licensee has satisfactorily completed an approved treatment program or evaluation, the probable cause panel, or the department when there is no board, shall not become involved in the licensee's case~~.

~~(c) Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint within the meaning of s. 456.073 and shall be exempt from the provisions of this subsection.~~

~~(d) Whenever the department receives a legally sufficient complaint alleging that a licensee is impaired as described in paragraph (a) and no complaint against the licensee other than impairment exists, the department shall forward all information in its possession regarding the impaired licensee to the consultant. For the purposes of this section, a suspension from hospital staff privileges due to the impairment does not constitute a complaint.~~

~~(e) The probable cause panel, or the department when there is no board, shall work directly with the consultant, and all information concerning a practitioner obtained from the consultant by the panel, or the department when there is no board, shall remain confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of subsections (6) and (7).~~

~~(f) A finding of probable cause shall not be made as long as the panel, or the department when there is no board, is satisfied, based upon information it receives from the consultant and the department, that the licensee is progressing satisfactorily in an approved impaired practitioner program and no other complaint against the licensee exists.~~

(10)~~(5)~~ In any disciplinary action for a violation other than impairment in which a practitioner ~~licensee~~ establishes the violation for which the practitioner ~~licensee~~ is being prosecuted was due to or connected with impairment and further establishes the practitioner ~~licensee~~ is satisfactorily progressing through or has successfully completed an impaired practitioner program ~~approved treatment program~~ pursuant to this section, such information may be considered by the board, or the department when there is no board, as a mitigating factor in determining the appropriate penalty. This subsection does not limit mitigating factors the board may consider.

(11)(a)~~(6)(a)~~ Upon request by the consultant, and with the authorization of the practitioner when required by law, an approved evaluator, treatment program, or treatment provider shall~~, upon request,~~ disclose to the consultant all information in its possession regarding a referral or participant ~~the issue of a licensee's impairment and participation in the treatment program. All information obtained by the consultant and department pursuant to this section is confidential and exempt from the provisions of s. 119.07(1), subject to the provisions of this subsection and subsection (7)~~. Failure to provide such information to the consultant is grounds for withdrawal of approval of such evaluator, treatment program, or treatment

provider.

(b) When a referral or participant is terminated from the impaired practitioner program for material noncompliance with a participant contract, inability to progress, or any other reason than completion, the consultant shall disclose ~~If in the opinion of the consultant, after consultation with the treatment provider, an impaired licensee has not progressed satisfactorily in a treatment program,~~ all information ~~regarding the issue of a licensee's impairment and participation in a treatment program~~ in the consultant's possession relating to the practitioner ~~shall be disclosed~~ to the department. Such disclosure shall constitute a complaint pursuant to the general provisions of s. 456.073. In addition, whenever the consultant concludes that impairment affects a practitioner's ~~licensee's~~ practice and constitutes an immediate, serious danger to the public health, safety, or welfare, the consultant shall immediately communicate such ~~that~~ conclusion ~~shall be communicated~~ to the department and disclose all information in the consultant's possession relating to the practitioner to the department ~~State Surgeon General~~.

(12) All information obtained by the consultant pursuant to this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(13)~~(7)~~ A consultant, or a director, officer, employee, or agent of a consultant, may not be held liable financially or may not have a cause of action for damages brought against him or her for making a disclosure pursuant to this section, for any other action or omission relating to the impaired practitioner program, or for the consequences of such disclosure or action or omission, including, without limitation, action by the

department against a license, registration, or certification ~~licensee, or approved treatment provider who makes a disclosure pursuant to this section is not subject to civil liability for such disclosure or its consequences~~.

(14) The provisions of s. 766.101 apply to any consultant and the consultant's directors, officers, employees, or agents in regards to providing information relating to a participant to a medical review committee if the participant authorizes such disclosure ~~officer, employee, or agent of the department or the board and to any officer, employee, or agent of any entity with which the department has contracted pursuant to this section~~.

(15)(a) ~~(8)(a)~~ A consultant retained pursuant to this section and ~~subsection (2),~~ a consultant's directors, officers, ~~and~~ employees, or agents ~~and those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention~~ shall be considered agents of the department for purposes of s. 768.28 while acting within the scope of the consultant's duties under the contract with the department ~~if the contract complies with the requirements of this section~~. ~~The contract must require that:~~

~~1. The consultant indemnify the state for any liabilities incurred up to the limits set out in chapter 768.~~

~~2. The consultant establish a quality assurance program to monitor services delivered under the contract.~~

~~3. The consultant's quality assurance program, treatment, and monitoring records be evaluated quarterly.~~

~~4. The consultant's quality assurance program be subject to~~

~~review and approval by the department.~~

~~5. The consultant operate under policies and procedures approved by the department.~~

~~6. The consultant provide to the department for approval a policy and procedure manual that comports with all statutes, rules, and contract provisions approved by the department.~~

~~7. The department be entitled to review the records relating to the consultant's performance under the contract for the purpose of management audits, financial audits, or program evaluation.~~

~~8. All performance measures and standards be subject to verification and approval by the department.~~

~~9. The department be entitled to terminate the contract with the consultant for noncompliance with the contract.~~

(b) In accordance with s. 284.385, the Department of Financial Services shall defend any claim, suit, action, or proceeding, including a claim, suit, action, or proceeding for injunctive, affirmative, or declaratory relief, against the consultant, or the consultant's directors, officers, ~~or~~ employees, and agents brought as the result of any action or omission relating to the impaired practitioner program ~~or those acting at the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention, which claim, suit, action, or proceeding is brought as a result of an act or omission by any of the consultant's officers and employees and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of the licensee or student~~

~~when the consultant is unable to perform such intervention, if the act or omission arises out of and is in the scope of the consultant's duties under its contract with the department~~.

(16)~~(c)~~ If a ~~the~~ consultant retained by the department pursuant to this section ~~subsection (2)~~ is also retained by another ~~any other~~ state agency to operate an impaired practitioner program for that agency, this section also applies to the consultant's operation of an impaired practitioner program for that agency~~, and if the contract between such state agency and the consultant complies with the requirements of this section, the consultant, the consultant's officers and employees, and those acting under the direction of the consultant for the limited purpose of an emergency intervention on behalf of a licensee or student as described in subsection (2) when the consultant is unable to perform such intervention shall be considered agents of the state for the purposes of this section while acting within the scope of and pursuant to guidelines established in the contract between such state agency and the consultant~~.

(17)~~(9)~~ A ~~An impaired practitioner consultant is the official custodian of records relating to the referral of an impaired licensee or applicant to that consultant and any other interaction between the licensee or applicant and the consultant. The~~ consultant may disclose to a referral or participant, or to the legal representative of the referral or participant, the documents, records, or other information from the consultant's file, including information received by the consultant from other sources, and information on the terms required for the referral's or participant's monitoring

contract, the referral's or participant's progress or inability to progress, the referral's or participant's discharge or termination, information supporting the conclusion of material noncompliance, or any other information required by law ~~the impaired licensee or applicant or his or her designee any information that is disclosed to or obtained by the consultant or that is confidential under paragraph (6)(a), but only to the extent that it is necessary to do so to carry out the consultant's duties under this section. The department, and any other entity that enters into a contract with the consultant to receive the services of the consultant, has direct administrative control over the consultant to the extent necessary to receive disclosures from the consultant as allowed by federal law.~~ If a consultant discloses information to the department in accordance with this part, a referral or participant, or his or her legal representative, may obtain a complete copy of the consultant's file from the consultant or ~~disciplinary proceeding is pending, an impaired licensee may obtain such information from~~ the department under s. 456.073.

(18)(a) The consultant may contract with a school or program to provide impaired practitioner program services to a student enrolled for the purpose of preparing for licensure as a health care practitioner as defined in this chapter or as a veterinarian under chapter 474 if the student has or is suspected of having an impairment. The department is not responsible for paying for the care provided by approved treatment providers or approved treatment programs or for the services provided by a consultant to a student.

(b) A medical school accredited by the Liaison Committee on

Medical Education or the Commission on Osteopathic College Accreditation, or another school providing for the education of students enrolled in preparation for licensure as a health care practitioner as defined in this chapter, or a veterinarian under chapter 474, which is governed by accreditation standards requiring notice and the provision of due process procedures to students, is not liable in any civil action for referring a student to the consultant retained by the department or for disciplinary actions that adversely affect the status of a student when the disciplinary actions are instituted in reasonable reliance on the recommendations, reports, or conclusions provided by such consultant, if the school, in referring the student or taking disciplinary action, adheres to the due process procedures adopted by the applicable accreditation entities and if the school committed no intentional fraud in carrying out the provisions of this section.

Section 2. Paragraph (l) of subsection (1) of section 401.411, Florida Statutes, is amended to read:

401.411 Disciplinary action; penalties.—

(1) The department may deny, suspend, or revoke a license, certificate, or permit or may reprimand or fine any licensee, certificateholder, or other person operating under this part for any of the following grounds:

(l) The failure to report to the department any person known to be in violation of this part. However, a professional known to be operating under this part without reasonable skill and without regard for the safety of the public by reason of illness, drunkenness, or the use of drugs, narcotics, chemicals,

or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 3. Paragraph (u) of subsection (1) of section 455.227, Florida Statutes, is amended to read:

455.227 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(u) Termination from an impaired practitioner program ~~a treatment program for impaired practitioners~~ as described in s. 456.076 for failure to comply, without good cause, with the terms of the monitoring or participant ~~treatment~~ contract entered into by the licensee or failing to successfully complete a drug or alcohol treatment program.

Section 4. Subsections (2) and (3) of section 456.0635, Florida Statutes, are amended to read:

456.0635 Health care fraud; disqualification for license, certificate, or registration.—

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the candidate or applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony

offense committed in another state or jurisdiction, unless the candidate or applicant has successfully completed a pretrial diversion or drug court program for that felony and provides proof that the plea has been withdrawn or the charges have been dismissed. Any such conviction or plea shall exclude the applicant or candidate from licensure, examination, certification, or registration unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application;

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the candidate or applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the candidate or applicant has been in

good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application; or

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

This subsection does not apply to an applicant for initial licensure, certification, or registration who was enrolled on or before July 1, 2009, in an educational or training program that was recognized by a board or, if there was no board, recognized by the department, and was arrested or charged with a felony specified in paragraph (a) or paragraph (b) before July 1, 2009.

(3) The department shall refuse to renew a license, certificate, or registration of any applicant if the applicant or any principal, officer, agent, managing employee, or affiliated person of the applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the applicant is currently enrolled in a pretrial diversion or drug court program that allows the withdrawal of the plea for that felony upon successful completion of that program. Any such conviction or plea excludes the applicant from licensure renewal unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application.

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396 since July 1, 2009, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application. However, if the applicant was arrested or charged with such felony before July 1, 2009, he or she is not excluded from licensure renewal under this paragraph.

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the applicant has been in good standing with the Florida Medicaid program for the most recent 5 years.

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application.

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

Section 5. Paragraphs (i) and (hh) of subsection (1) of section 456.072, Florida Statutes, are amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(i) Except as provided in s. 465.016, failing to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board. However, a person who the licensee knows is unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

(hh) Being terminated from an impaired practitioner program that ~~a treatment program for impaired practitioners, which~~ is overseen by a ~~an impaired practitioner~~ consultant as described in s. 456.076, for failure to comply, without good cause, with the terms of the monitoring or participant ~~treatment~~ contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

Section 6. Paragraph (f) of subsection (1) of section 457.109, Florida Statutes, is amended to read:

457.109 Disciplinary actions; grounds; action by the board.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department. However, a person who the licensee knows is

unable to practice acupuncture with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 7. Paragraph (e) of subsection (1) of section 458.331, Florida Statutes, is amended to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(e) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows is unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department ~~A treatment provider approved pursuant to s. 456.076 shall provide the department or consultant with information in accordance with the requirements of s. 456.076(4), (5), (6), (7), and (9)~~.

Section 8. Paragraph (e) of subsection (1) of section 459.015, Florida Statutes, is amended to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(e) Failing to report to the department or the department's impaired professional consultant any person who the licensee or certificateholder knows is in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows is unable to practice osteopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department ~~A treatment provider, approved pursuant to s. 456.076, shall provide the department or consultant with information in accordance with the requirements of s. 456.076(4), (5), (6), (7), and (9)~~.

Section 9. Paragraph (g) of subsection (1) of section 460.413, Florida Statutes, is amended to read:

460.413 Grounds for disciplinary action; action by board or department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(g) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows is unable to practice chiropractic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition,

may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 10. Paragraph (f) of subsection (1) of section 461.013, Florida Statutes, is amended to read:

461.013 Grounds for disciplinary action; action by the board; investigations by department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows is unable to practice podiatric medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 11. Paragraph (f) of subsection (1) of section 462.14, Florida Statutes, is amended to read:

462.14 Grounds for disciplinary action; action by the department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(f) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department. However, a person who the licensee knows is unable to practice naturopathic medicine with reasonable skill

and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 12. Paragraph (l) of subsection (1) of section 463.016, Florida Statutes, is amended to read:

463.016 Grounds for disciplinary action; action by the board.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(l) Willfully failing to report any person who the licensee knows is in violation of this chapter or of rules of the department or the board. However, a person who the licensee knows is unable to practice optometry with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 13. Paragraph (k) of subsection (1) of section 464.018, Florida Statutes, is amended to read:

464.018 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(k) Failing to report to the department any person who the licensee knows is in violation of this part or of the rules of the department or the board. However, a person who the licensee knows is unable to practice nursing with reasonable skill and

safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department~~; however, if the licensee verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the licensee is required to report such person only to an impaired professionals consultant~~.

Section 14. Paragraph (c) of subsection (2) of section 464.204, Florida Statutes, is amended to read:

464.204 Denial, suspension, or revocation of certification; disciplinary actions.—

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(c) Imposition of probation or restriction of certification, including conditions such as corrective actions as retraining or compliance with the department's impaired practitioner program operated by a consultant as described in s. 456.076 ~~an approved treatment program for impaired practitioners~~.

Section 15. Paragraph (o) of subsection (1) of section 465.016, Florida Statutes, is amended to read:

465.016 Disciplinary actions.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(o) Failing to report to the department any licensee under chapter 458 or under chapter 459 who the pharmacist knows has

violated the grounds for disciplinary action set out in the law under which that person is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part I of chapter 641, in which the pharmacist also provides services. However, a person who the licensee knows is unable to practice medicine or osteopathic medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 16. Paragraph (f) of subsection (1) of section 466.028, Florida Statutes, is amended to read:

466.028 Grounds for disciplinary action; action by the board.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(f) Failing to report to the department any person who the licensee knows, or has reason to believe, is clearly in violation of this chapter or of the rules of the department or the board. However, a person who the licensee knows, or has reason to believe, is clearly unable to practice her or his profession with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 17. Paragraph (h) of subsection (1) of section 467.203, Florida Statutes, is amended to read:

467.203 Disciplinary actions; penalties.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(h) Failing to report to the department any person who the licensee knows is in violation of this chapter or of the rules of the department. However, a person who the licensee knows is unable to practice midwifery with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 18. Paragraph (f) of subsection (1) of section 468.217, Florida Statutes, is amended to read:

468.217 Denial of or refusal to renew license; suspension and revocation of license and other disciplinary measures.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(f) Failing to report to the department any person who the licensee knows is in violation of this part or of the rules of the department or of the board. However, a person who the licensee knows is unable to practice occupational therapy with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to

the department.

Section 19. Paragraph (n) of subsection (1) of section 468.3101, Florida Statutes, is amended to read:

468.3101 Disciplinary grounds and actions.—

(1) The department may make or require to be made any investigations, inspections, evaluations, and tests, and require the submission of any documents and statements, which it considers necessary to determine whether a violation of this part has occurred. The following acts shall be grounds for disciplinary action as set forth in this section:

(n) Being terminated from an impaired practitioner program operated by a consultant as described in s. 456.076 for failure to comply, without good cause, with the terms of monitoring or a participant contract entered into by the licensee, or for not successfully completing a drug treatment or alcohol treatment program ~~Failing to comply with the recommendations of the department's impaired practitioner program for treatment, evaluation, or monitoring. A letter from the director of the impaired practitioner program that the certificateholder is not in compliance shall be considered conclusive proof under this part~~.

Section 20. Section 474.221, Florida Statutes, is amended to read:

474.221 Impaired practitioner provisions; applicability.—Notwithstanding the transfer of the Division of Medical Quality Assurance to the Department of Health or any other provision of law to the contrary, veterinarians licensed under this chapter shall be governed by the ~~treatment of~~ impaired practitioner program provisions of s. 456.076 as if they were under the

jurisdiction of the Division of Medical Quality Assurance, except that for veterinarians the Department of Business and Professional Regulation shall, at its option, exercise any of the powers granted to the Department of Health by that section, and "board" shall mean board as defined in this chapter.

Section 21. Paragraph (o) of subsection (1) of section 483.825, Florida Statutes, is amended to read:

483.825 Grounds for disciplinary action.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(o) Failing to report to the department a person or other licensee who the licensee knows is in violation of this chapter or the rules of the department or board adopted hereunder. However, a person or other licensee who the licensee knows is unable to perform or report on clinical laboratory examinations with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of a mental or physical condition, may be reported to a consultant operating an impaired practitioner program as described in s. 456.076 rather than to the department.

Section 22. 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)

4/25/17
Meeting Date

876
Bill Number (if applicable)

Topic Impaired Healthcare Practitioners

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title

Address 1430 Piedmont Dr E
Street

TLH FL 32308
City *State* *Zip*

Phone 8502246496

Email MThomas@flmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

876
Bill Number (if applicable)

Topic Impaired Practitioners

Amendment Barcode (if applicable)

Name Alisa LaFort

Job Title Lobbyist

Address PO Box 1394
Street

Phone 850-443-1319

TCH FL
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Intervention Project for Nurses

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)

4/25/17
Meeting Date

876
Bill Number (if applicable)

Topic Empaired Practioners

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address PO Box 1349 *Street*

Phone 850-443-1319

Tallahassee FL 32302
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Nurses Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

SB 816
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic PRN

Name Amy Young

Job Title Lobbyist

Address 360 S Washington Road
Street

West Palm Beach, FL 33405
City *State* *Zip*

Phone 561-655-1166

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Congress of OB-GYN's

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)

4/25/17
Meeting Date

876
Bill Number (if applicable)

Topic Impaired Health Care Practitioners

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Exec. Director

Address 2544 Blairstone Pines Dr.
Street

Phone 878-7364

Tallahassee FL 32301
City *State* *Zip*

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

876
Bill Number (if applicable)

Topic Midwife Adverse Incident Reporting

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Mundon Way
Street
Tallahassee FL 32309
City *State* *Zip*

Phone 850 567-1202

Email watson.strategies@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Association of Midwives

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 /25/2017
Meeting Date

Topic _____ Bill Number 838 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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.

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1398 (783680)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); and Senators Stewart and Baxley
SUBJECT:	Accessibility of Places of Public Accommodation
DATE:	April 24, 2017 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1398 creates a voluntary certification process for experts who advise places of public accommodation regarding compliance with the federal Americans with Disabilities Act (ADA).

Certified experts may inspect places of public accommodation to determine if barriers to access are present in the facility within the meaning of the ADA and the applicable regulations. Under the bill, the Department of Business and Professional Regulation (DBPR) must establish requirements to qualify experts for certification. An owner of a place of public accommodation may request an inspection by a DBPR-certified expert but is not required to use a DBPR-certified expert for such inspection.

The certified expert must provide the owner with a certification that the place of accommodation conforms to the ADA requirements. This certification is valid for three years after the date of issuance. If a place of public accommodation does not conform to ADA requirements, the bill provides a process for the owner to voluntarily submit a remediation plan to the DBPR. The remediation plan is valid for 10 years after submission. The DBPR is required to develop and maintain on its public website an electronic registry of certifications and remediation plans.

The bill requires the courts of this state to consider remediation plans filed with the DBPR to determine whether an ADA claim was filed in good faith and to evaluate the appropriateness of any award of attorney's fees.

The bill appropriates the sums of $5,000 in recurring funds and $155,000 in nonrecurring funds from the Professional Regulation Trust Fund for Fiscal Year 2017-2018 to the DBPR for new costs necessary to carry out the provisions of the bill. *See* Section V. Fiscal Impact Statement.

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

II. Present Situation:

The Americans with Disabilities Act

In 1990, the United States Congress (Congress) enacted the ADA. The purpose of the ADA is to prevent discrimination against individuals with disabilities in all areas of life, including jobs, schools, transportation, and all private and public areas that are open to the general public.[1]

An individual is considered disabled for the purposes of the ADA if the individual has:
- A physical or mental impairment that substantially limits one or more major life activities including but not limited to:
  - Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- A record of such impairment; or
- Being regarded as having such an impairment.[2]

The ADA consists of five titles:
- I-Employment;
- II-Public Entities;
- III-Public Accommodation;
- IV-Telecommunications; and
- V-Miscellaneous Provisions

Places of Public Accommodation

Title III of the ADA prohibits places of public accommodation (public places) from discriminating against individuals with disabilities. Places of public accommodation include:
- Most places of lodging such as an inn, motel, or hotel;
- Restaurants, bars, and other establishments serving food or drink;
- Movie theatres, stadiums, concert halls, and other places of entertainment;
- Sales or rental establishments, such as bakeries, grocery stores, clothing stores, etc.;
- Service establishments, such as banks, barber shops, beauty shops, gas stations, office of an accountant or lawyer, pharmacy, insurance offices, hospitals, etc.;
- A terminal, depot, or other station used for specified public transportation;
- A museum, library, gallery, or other place of public display or collection;
- A park, zoo, amusement park, or other place of recreation;

[1] ADA.gov National Network, https://www.ada.gov/ada_intro.htm (last visited on March 28, 2017).
[2] 42 U.S.C. § 12102 (2017).

- Places of education, such as a nursery, elementary, secondary, undergraduate, or postgraduate private school, etc.;
- A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.[3]

In order to prohibit discrimination in public places, the United States Department of Justice (DOJ) publishes standards for minimum requirements for newly designed, constructed, or altered public places. The standards ensure public places are readily accessible and usable by individuals with disabilities. The current standards are the 2010 ADA Standards for Accessible Design.[4]

Accessibility Requirements in Florida

The Florida Building Code (building code) is established by part IV of ch. 553, F.S., also known as the "Florida Building Codes Act." The purpose and intent of the Florida Building Codes Act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code.[5]

In 1993, the Legislature enacted the Florida Americans with Disabilities Accessibility Implementation Act (Florida ADA) to incorporate the accessibility requirements of the ADA.[6] The intent of the Florida ADA is to ensure the state's construction standards and codes receive and maintain certification by the DOJ as equivalent to federal standards for accessibility of buildings, structures, and facilities.[7] Enforcement of the Florida ADA is the responsibility of local governments and code enforcement agencies.[8] Federal ADA regulations are incorporated into the Florida Accessibility Code for Building Construction (Florida's ADA code), as adopted by the Florida Building Commission.[9] Florida's ADA code is also incorporated into the building code.[10]

Compliance with the building code creates a presumption of compliance with Title III of the ADA.[11] However, the building code only applies to new construction, new alteration, buildings where the original construction or any former renovation or alteration was in violation of the permit, or buildings being converted from residential to non-residential or mixed use. The

[3] 42 U.S.C. § 12131 (2017).
[4] United States Department of Justice, *2010 ADA Standards for Accessible Design*, https://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards_prt.pdf (last visited on Mar. 28, 2017).
[5] The current edition of the code is the Florida Building Code, 5th Edition (2014), available at: https://www.floridabuilding.org/bc/bc_default.aspx (last visited March 28, 2017).
[6] Ch. 93-183, Laws of Fla., codified as part II of ch. 553, F.S.
[7] Section 553.502, F.S.
[8] Section 553.513, F.S.
[9] *See* s. 553.503, F.S. The federal ADA regulations are at 28 C.F.R. parts 35 and 36 and 49 C.F.R. part 37.
[10] Section 553.73(1)(a), F.S.
[11] Florida Building Commission, Preface, Florida Building Code Accessibility, 5th Edition (2014), at: http://floridabuilding2.iccsafe.org/app/book/toc/2014/Florida/Accessibility%20Code/index.html (last visited on March 28, 2017).

building code does not apply to existing buildings that may not be in compliance with the ADA.[12]

Title III ADA lawsuits

If an individual with a disability who believes a public place is in violation of Title III of the ADA, the individual may:

- File a complaint with the Disability Rights Section of the DOJ, and the DOJ may enter into mediation with the public place to resolve any complaints.
- File suit in court against the public place for a violation of Title III of the ADA, or
- File suit as a plaintiff against the public place in court.[13]

Title III of the ADA does not require a plaintiff to give notice to the public place before filing suit.[14]

A public place is considered to be discriminating against an individual with a disability if the public place fails to make reasonable modifications under the Standards for Accessible Design, unless the modifications would fundamentally alter the nature of the public place.[15]

In order for a plaintiff to prevail against a defendant in such lawsuit, the plaintiff must prove three elements:

- The plaintiff is considered disabled under the ADA;
- The defendant owns, leases, or operates a place of public accommodation; and
- The defendant discriminated against the plaintiff. [16]

If a plaintiff prevails in a Title III ADA claim, the plaintiff is entitled to injunctive relief, but is not entitled to damages for past discriminations.[17] However, the ADA grants a court discretion to award attorney's fees to the prevailing party.[18] The U.S. District Court for the Southern District of Florida has previously indicated that a prevailing plaintiff in an ADA claim is "ordinarily awarded attorney's fees in all but special circumstances."[19] However, a prevailing defendant is not entitled to attorney's fees unless the court finds that the plaintiff's claim was brought or litigated in bad faith, i.e., the claim was frivolous, groundless, unreasonable, or the claim became frivolous, groundless, or unreasonable.[20]

Since 2013, the number of Title III ADA suits filed in federal court has risen by 138 percent. In 2016, Florida ranked second in the nation with 1,663 Title III ADA lawsuits; there were 816

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[12] Section 553.507, F.S.
[13] ADA.gov, *How to file an ADA complaint with the US Department of Justice*, https://www.ada.gov/filing_complaint.htm#5 (last visited Mar. 20, 2017).
[14] *Ass'n of Disabled Ams. v. Neptune Designs, Inc.*, 469 F. 3d, 1357, 1360 (11th Cir. 2006).
[15] *Alumni, LLC v. Carnival Corp.*, 987 F. Supp. 2d 1290, 1303 (S.D. Fla. 2013).
[16] *Norkunas v. Seahorse NB, LLC*, 444 Fed. Appx. 412, 416 (11th Cir. 2011).
[17] *Id.*
[18] 42 U.S.C. s. 12205; *See also, Ass'n of Disabled Ams. v. Neptune Designs, Inc.*, 469 F. 3d, 1359, 1360 (11th Cir. 2006).
[19] *Goodman v. Tatton Enters*, 2012 U.S. Dist. Lexis 189060 79-80 (S.D. Fla. 2012).
[20] *Id.*

such lawsuits in 2013.[21] Some of the increase is attributed to serial plaintiffs who file multiple lawsuits, also known as "ADA testers." One Florida resident is reported to have filed more than 1,000 separate ADA lawsuits against Florida businesses, which is approximately 20 percent of all of the ADA compliance lawsuits filed in Florida since 2012.[22]

Although the Florida ADA does not provide a cause of action for violations, federal ADA compliance lawsuits may be filed in either federal or state courts; state courts have concurrent jurisdiction over ADA claims.[23]

California's Attempt to Curb Title III ADA Claims

In 2003, California, in which over 2,400 Title III ADA lawsuits with filed in 2016,[24] created the voluntary Certified Access Specialist program (CASp) to meet the public's need for qualified individuals to inspect buildings and sites for compliance with accessibility standards including those in the ADA. If a California business chooses to hire a CASp-certified person to assess ADA compliance, the CASp will issue a report listing any improvements that need to be made in order to become compliant with federal and state accessibility laws, or state that the business meets applicable standards.[25] Participation in the CASp may offer the property owner "qualified defendant" status in a construction-related accessibility lawsuit if the owner received an inspection of the existing facility, received a report from a CASp, and has a compliance schedule in place before a construction-related accessibility claim is filed. Benefits for a "qualified defendant" include reduced statutory damages.[26]

Florida Department of Business & Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has 12 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;

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[21] *See* Minh Vu, Kristina M. Launey, and Susan Ryan, *ADA Title III Lawsuits Increase by 37 Percent in 2016*, The Seyfarth ADA Title III News & Insights Blog, January 29, 2017, at: http://www.adatitleiii.com/2017/01/ada-title-iii-lawsuits-increase-by-37-percent-in-2016/ (last visited on March 29, 2017); and Minh Vu, Kristina M. Launey, and Susan Ryan, A*DA Title III Lawsuits Continue to Rise: 8% Increase in 2015*, The Seyfarth ADA Title III News & Insights Blog, January 15, 2016, at: http://www.adatitleiii.com/2016/01/ada-title-iii-lawsuits-continue-to-rise-8-increase-in-2015/ (last visited on March 29, 2017).

[22] Katie Lagrone and Matthew Apthorp, *Crippled Florida Businesses seek help over serial Americans with Disabilities Act suers*, ABC Action News Tampa Bay, November 21, 2016, at: http://www.abcactionnews.com/longform/crippled-florida-businesses-seek-help-over-serial-americans-with-disabilities-act-suers, (last visited on March 29, 2017).

[23] *See* Hapgood v. City of Warren, 127 F.S.3d 490 (6th Cir. 1997).

[24] *See* Minh Vu, Kristina M. Launey, and Susan Ryan, A*DA Title III Lawsuits Continue to Rise: 8% Increase in 2015*, The Seyfarth ADA Title III News & Insights Blog, January 15, 2016, at: http://www.adatitleiii.com/2016/01/ada-title-iii-lawsuits-continue-to-rise-8-increase-in-2015/ (last visited on March 29, 2017).

[25] *See* Division of the State Architect, Voluntary Certified Access Program, http://www.dgs.ca.gov/dsa/Programs/programCert/casp.aspx (last visited on Mar. 24, 2017).

[26] *Id.*

- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

Fifteen boards and programs exist within the Division of Professions, two boards are within the Division of Real Estate,[27] and one board exists in the Division of Certified Public Accounting.[28] Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes:

- Board of Architecture and Interior Design, part I of ch. 481, F.S.;
- Florida Board of Auctioneers, part VI of ch. 468, F.S.;
- Barbers' Board, ch. 476, F.S.;
- Florida Building Code Administrators and Inspectors Board, part XII of ch. 468, F.S.;
- Construction Industry Licensing Board, part I of ch. 489, F.S.;
- Board of Cosmetology, ch. 477, F.S.;
- Electrical Contractors' Licensing Board, part II of ch. 489, F.S.;
- Board of Employee Leasing Companies, part XI of ch. 468, F.S.;
- Board of Landscape Architecture, part II of ch. 481, F.S.;
- Board of Pilot Commissioners, ch. 310, F.S.;
- Board of Professional Engineers, ch. 471, F.S.;
- Board of Professional Geologists, ch. 492, F.S.;
- Board of Veterinary Medicine, ch. 474, F.S.;
- Home Inspection Services Licensing Program, part XV of ch. 468, F.S.; and
- Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.[29] The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to Parts I and III of ch. 450, F.S.

III. Effect of Proposed Changes:

Experts

The bill creates s. 553.5141, F.S., to provide a voluntary certification process for experts who advise places of public accommodation regarding compliance with the ADA. Certified experts may inspect places of public accommodation to determine if barriers to access are present in the facility within the meaning of the ADA and the applicable regulations.

[27] *See* s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.
[28] *See* s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.
[29] Section 548.003(1), F.S.

Under the bill, the DBPR must establish requirements for experts to qualify for certification. The bill provides that the experts must have sufficient experience, knowledge, or training to advise places of public accommodation regarding the ADA compliance guidelines applicable to places of public accommodation. The bill does not provide a certification fee.

Owners of Places of Public Accommodation

An owner of a place of public accommodation may request an inspection of a facility by a DBPR-certified expert, but is not required to use a DBPR-certified expert.

If a place of public accommodation conforms to ADA requirements, the certified expert must provide the owner with a certification of conformity, which is valid for three years after the date of issuance. If a place of public accommodation does not conform to ADA requirements, the owner may submit a remediation plan to the DBPR with:

- The date of inspection.
- The name of the certified expert or other person who performed the inspection.
- The specific remedial measures that the place of public accommodation will undertake.
- The anticipated dates each remedial measure will be initiated and completed.

A remediation plan submitted to the DBPR is valid for 10 years after its submission.

The bill requires the DBPR to develop and maintain on its public website an electronic registry of certifications of conformity and remediation plans. In addition, the DBPR is required to adopt rules to administer the certification program.

Court Consideration of Remediation Plans

The bill requires the courts of this state to consider remediation plans filed with the DBPR to determine whether an ADA claim was filed in good faith and to evaluate the appropriateness of any award of attorney's fees.

Appropriation

The bill appropriates $160,000 ($155,000 in nonrecurring and $5,000 in recurring funds) from the Professional Regulation Trust Fund to the DBPR for the 2017-2018 fiscal year to implement the provisions of this act.

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 does not specify fees for certification as an expert or registration of remediation plans.

Since certificates of conformity are only valid for three years, owners of public places may have to pay for inspections every three years in order to prove they are compliant with the Title III of the ADA.

C. Government Sector Impact:

The computer application used by the Florida Building Commission (commission) is called the Building Code Information System (BCIS). The DBPR anticipates the electronic registry created by the bill will be housed in the BCIS. There will need to be modifications to BCIS to house the electronic registry and register licensed experts. The DBPR also anticipates additional software licensing and maintenance costs for the administration of the new expert certification.[30] The bill appropriates the sums of $5,000 in recurring funds and $155,000 in nonrecurring funds from the Professional Regulation Trust Fund for Fiscal Year 2017-2018 to the DBPR for new costs necessary to carry out the provisions of the bill.

According to the DBPR, there will be a moderate workload impact associated with the implementation of the new certification program; however, based on an estimated certification population of approximately 350 to 500 certifications there is no sustained full-time equivalent (FTE) position impact.[31]

VI. Technical Deficiencies:

None.

[30] *See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 1398*, dated March 7, 2017 (on file with Senate Committee on Regulated Industries) at pages 6-7.
[31] *See 2017 Agency Legislative Bill Analysis issued by the DBPR for CS/CS/HB 727*, dated April 13, 2017 (on file with Senate Appropriations Subcommittee on General Government) at pages 6-7.

VII. Related Issues:

According to the DBPR, a Sunrise Act analysis per s. 11.62, F.S., has not been completed to determine if it is necessary to regulate this activity to protect the public health, safety or welfare.[32]

VIII. Statutes Affected:

This bill creates section 553.5141 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 by Appropriations Subcommittee on General Government on April 18, 2017:
The committee substitute provides an appropriation to the DBPR of $160,000 from the Professional Regulation Trust Fund to implement the provisions in this act.

B. Amendments:

None.

[32] *Id*. at page 6.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Stewart) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 553.5141, Florida Statutes, is created to read:

553.5141 Certifications of conformity and remediation plans.—

(1) For purposes of this section:

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(a) "Commerce" means travel, trade, traffic, commerce, transportation, or communication:

1. Among the several states;

2. Between any foreign country or any territory or possession and any state; or

3. Between points in the same state but through another state or foreign country.

(b) "Department" means the Department of Business and Professional Regulation.

(c) "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

(d) "Qualified expert" means:

1. An engineer licensed pursuant to chapter 471.

2. A certified general contractor licensed pursuant to chapter 489.

3. A certified building contractor licensed pursuant to chapter 489.

4. A building code administrator licensed pursuant to chapter 468.

5. A building inspector licensed pursuant to chapter 468.

6. A plans examiner licensed pursuant to chapter 468.

7. An interior designer licensed pursuant to chapter 481.

8. An architect licensed pursuant to chapter 481.

9. A landscape architect licensed pursuant to chapter 481.

10. Any person who has had a remediation plan related to a claim under Title III of the Americans with Disabilities Act, 42

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U.S.C. s. 12182, accepted by a federal court in a settlement agreement or court proceeding, or who has been qualified as an expert in Title III of the Americans with Disabilities Act, 42 U.S.C. s. 12182, by a federal court.

(e) "Place of public accommodation" means a facility operated by a private entity whose operations affect commerce and is a private entity as described in 42 U.S.C. s. 12181(7).

(f) "Private entity" means any nongovernmental entity, such as a corporation, partnership, company or nonprofit organization, any other legal entity, or any natural person.

(g) "Registry" means the registry of certifications of competency and remediation plans filed by places of public accommodation and maintained by the department.

(2)(a) An owner of a place of public accommodation who requests that the owner's facility be inspected by a qualified expert may submit a certification of conformity with the department which indicates that such place of public accommodation conforms to Title III of the Americans with Disabilities Act; such certification of conformity shall be valid for 3 years after the date of issuance. Any certification of conformity filed with the department must include:

1. The date that the place of public accommodation was inspected.

2. The name of the qualified expert or any other person who inspected the place of public accommodation.

3. Proof of qualification as an expert in accordance with paragraph (1)(d), including a license number or a sworn statement indicating the person has at least one order by a federal court accepting a remediation plan of the qualified

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expert in a settlement agreement or at least one order by a federal court accepting the qualified expert's testimony related to Title III of the Americans with Disabilities Act, 42 U.S.C. s. 12182.

4. A statement in writing by the qualified expert attesting that the information contained in the certification of conformity is complete and accurate.

(b) An owner of a place of public accommodation who requests that the owner's facility be inspected by a qualified expert may submit a remediation plan with the department that indicates that such place of public accommodation plans to conform to Title III of the Americans with Disabilities Act within a specified time period. Any remediation plan submitted to the department which indicates that a place of public accommodation does not conform to Title III of the Americans with Disabilities Act must include a remediation plan to remedy the deficiencies, which includes a reasonable amount of time, not to exceed 10 years, in which the plan must be completed. The plan must include:

1. The date that the place of public of accommodation was inspected.

2. The name of the qualified expert or any other person who inspected the place of public accommodation.

3. Identification of specific remedial measures that the place of public accommodation will undertake.

4. The anticipated date of initiation and completion for each remedial measure that the place of public accommodation has agreed to undertake.

5. Proof of qualification as an expert in accordance with

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paragraph (1)(d), including a license number or a sworn statement indicating the qualified expert has at least one order by a federal court accepting a remediation plan prepared by the qualified expert in a settlement agreement or at least one order by a federal court accepting the qualified expert's testimony related to Title III of the Americans with Disabilities Act, 42 U.S.C. s. 12182.

6. A statement in writing by the qualified expert attesting that the information contained in the remediation plan is complete and accurate.

(3) An owner of a place of public accommodation may file a certification of conformity or a remediation plan with the department. Such filing serves as notice to the public that the place of public accommodation is in compliance with Title III of the Americans with Disabilities Act or that such place of public accommodation is making reasonable efforts to come into compliance with the act.

(4) The department shall develop and maintain a website, accessible to the public, which provides an electronic registry of certifications of conformity and remediation plans.

(5) In any action brought in this state alleging a violation of Title III of the Americans with Disabilities Act, 42 U.S.C. s. 12182, the court shall consider any remediation plan or certification of conformity filed in accordance with this section by a place of public accommodation with the department before the filing of the plaintiff's complaint when the court considers and determines whether the plaintiff's complaint was filed in good faith and whether the plaintiff is entitled to attorney fees and costs.

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Section 2. For the 2017-2018 fiscal year, the sums of $5,000 in recurring funds and $155,000 in nonrecurring funds from the Professional Regulation Trust Fund are appropriated to the Department of Business and Professional Regulation for the purpose of implementing this act.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the accessibility of places of public accommodation; creating s. 553.5141, F.S.; providing definitions; authorizing qualified experts to advise and provide certain inspections for places of public accommodation relating to the Americans with Disabilities Act; authorizing an owner of a place of public accommodation to request that his or her facility be inspected for specified purposes; authorizing an owner of a place of public accommodation to file a certification of conformity or remediation plan with the Department of Business and Professional Regulation; requiring a court to consider certain information in specified actions; requiring the department to develop and maintain a website for specified purposes; providing an appropriation; providing an effective date.

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576-04074-17

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

A bill to be entitled

An act relating to the accessibility of places of public accommodation; creating s. 553.5141, F.S.; providing definitions; requiring the Department of Business and Professional Regulation to establish a program to provide for the certification of certain experts; authorizing such experts to advise and provide certain inspections for places of public accommodation relating to the Americans with Disabilities Act; requiring the department to establish certification requirements; authorizing an owner of a place of public accommodation to request a facility to be inspected for specified purposes; requiring a certified expert to provide the owner of a place of public accommodation a certification of conformity if the facility conforms to specified provisions of the Americans with Disabilities Act; specifying that such certificate is valid for 3 years; specifying that an owner of a place of public accommodation may submit a remediation plan to the department under certain circumstances; providing that a remediation plan is only valid for a certain period of time; requiring a court to consider certain information in specified actions; requiring the department to develop and maintain a website for specified purposes; requiring the department to adopt rules; providing an appropriation; providing an

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576-04074-17

effective date.

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

Section 1. Section 553.5141, Florida Statutes, is created to read:

553.5141 Americans with Disabilities Act; certification of experts.—

(1) For purposes of this section:

(a) "Certified expert" means a person certified by the department under subsection (2).

(b) "Commerce" means communication, trade, traffic, transportation, or travel:

1. Among the several states;

2. Between any foreign country or any territory or possession and any state; or

3. Between points in the same state but through another state or foreign country.

(c) "Department" means the Department of Business and Professional Regulation.

(d) "Facility" means all or any portion of buildings, complexes, equipment, parking lots, passageways, roads, rolling stock or other conveyances, sites, structures, walks, or other real or personal property, including the site where the building, equipment, property, or structure is located.

(e) "Place of public accommodation" means a facility operated by a private entity whose operations affect commerce and is a private entity as described in 42 U.S.C. s. 12181(7).

(f) "Private entity" means any nongovernmental entity, such

as a company or nonprofit organization, corporation, partnership, any other legal entity, or any natural person.

(g) "Registry" means the registry of certified experts and of remediation plans filed by places of public accommodation and maintained by the department.

(2)(a) The department shall establish a program to provide certification for experts who have sufficient experience, knowledge, or training to advise places of public accommodation regarding the compliance guidelines applicable to places of public accommodation under subchapter III of the Americans with Disabilities Act, 42 U.S.C. s. 12182. The certified experts may provide inspections of places of public accommodation to determine if barriers to access are present in the facility within the meaning of 42 U.S.C. s. 12182 and the applicable regulations interpreting that chapter.

(b) The department shall establish requirements for experts to qualify for certification under this section.

(3)(a) An owner of a place of public accommodation may request that a facility be inspected by a certified expert. However, use of an expert certified under this section is not required.

(b) If a place of public accommodation conforms to subchapter III of the Americans with Disabilities Act, the certified expert must provide the owner with a certification of conformity which is valid for 3 years after the date of issuance.

(c) If a place of public accommodation does not conform to subchapter III of the Americans with Disabilities Act, the owner may submit a remediation plan to the department which includes:

1. The date the place of public accommodation was inspected.

2. The name of the certified expert or other person who inspected the place of public accommodation.

3. Identification of specific remedial measures that the place of public accommodation will undertake.

4. The anticipated dates of initiation and completion for each remedial measure that the place of public accommodation has agreed to undertake.

(d) A remediation plan submitted under paragraph (c) is only valid for 10 years after its submission to the department.

(e) In any action brought in this state alleging a violation of subchapter III of the Americans with Disabilities Act, 42 U.S.C. s. 12182, the courts shall consider any remediation plan filed by the place of public accommodation before the filing of the plaintiff's complaint in determining if the plaintiff's complaint was filed in good faith and if the plaintiff is entitled to attorney fees and costs.

(4) The department shall develop and maintain on its website, accessible to the public, an electronic registry of certifications of conformity and remediation plans.

(5) The department shall adopt rules to administer this section.

Section 2. For the 2017-2018 fiscal year, the sums of $5,000 in recurring funds and $155,000 in nonrecurring funds from the Professional Regulation Trust Fund are appropriated to the Department of Business and Professional Regulation for the purpose of implementing this act.

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/SB 1398
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); and Senator Stewart and others
SUBJECT:	Accessibility of Places of Public Accommodation
DATE:	April 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	**Favorable**
2.	Davis	Betta	AGG	**Recommend: Fav/CS**
3.	Davis	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1398 creates a voluntary process to certify places of public accommodation as conforming to the requirements of the federal Americans with Disabilities Act (ADA) after inspection by a qualified expert.

The bill defines a qualified expert as licensed engineers, general contractors, building contractors, building code administrators, building inspectors, plans examiners, interior designers, architects, and landscape architects. Qualified experts also include any person who has had a remediation plan related to a claim under the ADA accepted by a federal court in a settlement agreement or court proceeding, or who has been qualified as an expert in the ADA by a federal court.

An owner of a place of public accommodation who has had the place of public accommodation inspected by a qualified expert may submit certification of conformity with the Department of Business and Professional Regulation (DBPR) which indicates that the place of public accommodation conforms to the ADA.

If the place of public accommodation does not conform to the ADA requirements, the owner of the place of public accommodation may submit to the DBPR a remediation plan, which includes a reasonable amount of time, not to exceed 10 years, for completion of the remediation plan.

The bill requires the courts of this state to consider remediation plans filed with the DBPR to determine whether an ADA claim was filed in good faith and to evaluate the appropriateness of any award of attorney's fees.

The bill appropriates the sums of $5,000 in recurring funds and $155,000 in nonrecurring funds from the Professional Regulation Trust Fund for Fiscal Year 2017-2018 to the DBPR for new costs necessary to carry out the provisions of the bill. *See* Section V. Fiscal Impact Statement.

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

II. Present Situation:

The Americans with Disabilities Act

In 1990, the United States Congress (Congress) enacted the Americans with Disabilities Act (ADA). The purpose of the ADA is to prevent discrimination against individuals with disabilities in all areas of life, including jobs, schools, transportation, and all private and public areas that are open to the general public.[1]

An individual is considered disabled for the purposes of the ADA if the individual has:
- A physical or mental impairment that substantially limits one or more major life activities including but not limited to:
  - Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- A record of such impairment; or
- Being regarded as having such an impairment.[2]

The ADA consists of five titles:
- I-Employment;
- II-Public Entities;
- III-Public Accommodation;
- IV-Telecommunications; and
- V-Miscellaneous Provisions

Places of Public Accommodation

Title III of the ADA prohibits places of public accommodation (public places) from discriminating against individuals with disabilities. Places of public accommodation include:
- Most places of lodging such as an inn, motel, or hotel;
- Restaurants, bars, and other establishments serving food or drink;
- Movie theatres, stadiums, concert halls, and other places of entertainment;
- Sales or rental establishments, such as bakeries, grocery stores, clothing stores, etc.;

[1] ADA.gov National Network, https://www.ada.gov/ada_intro.htm (last visited on March 28, 2017).
[2] 42 U.S.C. § 12102 (2017).

- Service establishments, such as banks, barber shops, beauty shops, gas stations, office of an accountant or lawyer, pharmacy, insurance offices, hospitals, etc.;
- A terminal, depot, or other station used for specified public transportation;
- A museum, library, gallery, or other place of public display or collection;
- A park, zoo, amusement park, or other place of recreation;
- Places of education, such as a nursery, elementary, secondary, undergraduate, or postgraduate private school, etc.;
- A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.[3]

In order to prohibit discrimination in public places, the United States Department of Justice (DOJ) publishes standards for minimum requirements for newly designed, constructed, or altered public places. The standards ensure public places are readily accessible and usable by individuals with disabilities. The current standards are the 2010 ADA Standards for Accessible Design.[4]

Accessibility Requirements in Florida

The Florida Building Code (building code) is established by part IV of ch. 553, F.S., also known as the "Florida Building Codes Act." The purpose and intent of the Florida Building Codes Act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code.[5]

In 1993, the Legislature enacted the Florida Americans with Disabilities Accessibility Implementation Act (Florida ADA) to incorporate the accessibility requirements of the ADA.[6] The intent of the Florida ADA is to ensure the state's construction standards and codes receive and maintain certification by the DOJ as equivalent to federal standards for accessibility of buildings, structures, and facilities.[7] Enforcement of the Florida ADA is the responsibility of local governments and code enforcement agencies.[8] Federal ADA regulations are incorporated into the Florida Accessibility Code for Building Construction (Florida's ADA code), as adopted by the Florida Building Commission.[9] Florida's ADA code is also incorporated into the building code.[10]

[3] 42 U.S.C. § 12131 (2017).
[4] United States Department of Justice, *2010 ADA Standards for Accessible Design*, https://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards_prt.pdf (last visited on April 25, 2017).
[5] The current edition of the code is the Florida Building Code, 5th Edition (2014), available at: https://www.floridabuilding.org/bc/bc_default.aspx (last visited April 25, 2017).
[6] Ch. 93-183, Laws of Fla., codified as part II of ch. 553, F.S.
[7] Section 553.502, F.S.
[8] Section 553.513, F.S.
[9] *See* s. 553.503, F.S. The federal ADA regulations are at 28 C.F.R. parts 35 and 36 and 49 C.F.R. part 37.
[10] Section 553.73(1)(a), F.S.

Compliance with the building code creates a presumption of compliance with Title III of the ADA.[11] However, the building code only applies to new construction, new alteration, buildings where the original construction or any former renovation or alteration was in violation of the permit, or buildings being converted from residential to non-residential or mixed use. The building code does not apply to existing buildings that may not be in compliance with the ADA.[12]

Title III ADA lawsuits

If an individual with a disability who believes a public place is in violation of Title III of the ADA, the individual may:

- File a complaint with the Disability Rights Section of the DOJ, and the DOJ may enter into mediation with the public place to resolve any complaints.
- File suit in court against the public place for a violation of Title III of the ADA, or
- File suit as a plaintiff against the public place in court.[13]

Title III of the ADA does not require a plaintiff to give notice to the public place before filing suit.[14]

A public place is considered to be discriminating against an individual with a disability if the public place fails to make reasonable modifications under the Standards for Accessible Design, unless the modifications would fundamentally alter the nature of the public place.[15]

In order for a plaintiff to prevail against a defendant in such lawsuit, the plaintiff must prove three elements:

- The plaintiff is considered disabled under the ADA;
- The defendant owns, leases, or operates a place of public accommodation; and
- The defendant discriminated against the plaintiff. [16]

If a plaintiff prevails in a Title III ADA claim, the plaintiff is entitled to injunctive relief, but is not entitled to damages for past discriminations.[17] However, the ADA grants a court discretion to award attorney's fees to the prevailing party.[18] The U.S. District Court for the Southern District of Florida has previously indicated that a prevailing plaintiff in an ADA claim is "ordinarily awarded attorney's fees in all but special circumstances."[19] However, a prevailing defendant is not entitled to attorney's fees unless the court finds that the plaintiff's claim was brought or

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[11] Florida Building Commission, Preface, Florida Building Code Accessibility, 5th Edition (2014), at: http://floridabuilding2.iccsafe.org/app/book/toc/2014/Florida/Accessibility%20Code/index.html (last visited on April 25, 2017).
[12] Section 553.507, F.S.
[13] ADA.gov, *How to file an ADA complaint with the US Department of Justice*, https://www.ada.gov/filing_complaint.htm#5 (last visited April 25, 2017).
[14] *Ass'n of Disabled Ams. v. Neptune Designs, Inc.*, 469 F. 3d, 1357, 1360 (11th Cir. 2006).
[15] *Alumni, LLC v. Carnival Corp.*, 987 F. Supp. 2d 1290, 1303 (S.D. Fla. 2013).
[16] *Norkunas v. Seahorse NB, LLC*, 444 Fed. Appx. 412, 416 (11th Cir. 2011).
[17] *Id.*
[18] 42 U.S.C. s. 12205; *See also, Ass'n of Disabled Ams. v. Neptune Designs, Inc.*, 469 F. 3d, 1359, 1360 (11th Cir. 2006).
[19] *Goodman v. Tatton Enters*, 2012 U.S. Dist. Lexis 189060 79-80 (S.D. Fla. 2012).

litigated in bad faith, i.e., the claim was frivolous, groundless, unreasonable, or the claim became frivolous, groundless, or unreasonable.[20]

Since 2013, the number of Title III ADA suits filed in federal court has risen by 138 percent. In 2016, Florida ranked second in the nation with 1,663 Title III ADA lawsuits; there were 816 such lawsuits in 2013.[21] Some of the increase is attributed to serial plaintiffs who file multiple lawsuits, also known as "ADA testers." One Florida resident is reported to have filed more than 1,000 separate ADA lawsuits against Florida businesses, which is approximately 20 percent of all of the ADA compliance lawsuits filed in Florida since 2012.[22]

Although the Florida ADA does not provide a cause of action for violations, federal ADA compliance lawsuits may be filed in either federal or state courts; state courts have concurrent jurisdiction over ADA claims.[23]

California's Attempt to Curb Title III ADA Claims

In 2003, California, in which over 2,400 Title III ADA lawsuits with filed in 2016,[24] created the voluntary Certified Access Specialist program (CASp) to meet the public's need for qualified individuals to inspect buildings and sites for compliance with accessibility standards including those in the ADA. If a California business chooses to hire a CASp-certified person to assess ADA compliance, the CASp will issue a report listing any improvements that need to be made in order to become compliant with federal and state accessibility laws, or state that the business meets applicable standards.[25] Participation in the CASp may offer the property owner "qualified defendant" status in a construction-related accessibility lawsuit if the owner received an inspection of the existing facility, received a report from a CASp, and has a compliance schedule in place before a construction-related accessibility claim is filed. Benefits for a "qualified defendant" include reduced statutory damages.[26]

Florida Department of Business & Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR), which has 12 divisions:

- Administration;

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[20] *Id.*

[21] *See* Minh Vu, Kristina M. Launey, and Susan Ryan, *ADA Title III Lawsuits Increase by 37 Percent in 2016*, The Seyfarth ADA Title III News & Insights Blog, January 29, 2017, at: http://www.adatitleiii.com/2017/01/ada-title-iii-lawsuits-increase-by-37-percent-in-2016/ (last visited on April 25, 2017); and Minh Vu, Kristina M. Launey, and Susan Ryan, A*DA Title III Lawsuits Continue to Rise: 8% Increase in 2015*, The Seyfarth ADA Title III News & Insights Blog, January 15, 2016, at: http://www.adatitleiii.com/2016/01/ada-title-iii-lawsuits-continue-to-rise-8-increase-in-2015/ (last visited on April 25, 2017).

[22] Katie Lagrone and Matthew Apthorp, *Crippled Florida Businesses seek help over serial Americans with Disabilities Act suers*, ABC Action News Tampa Bay, November 21, 2016, at: http://www.abcactionnews.com/longform/crippled-florida-businesses-seek-help-over-serial-americans-with-disabilities-act-suers, (last visited on April 25, 2017).

[23] *See* Hapgood v. City of Warren, 127 F.S.3d 490 (6th Cir. 1997).

[24] *See* Minh Vu, Kristina M. Launey, and Susan Ryan, A*DA Title III Lawsuits Continue to Rise: 8% Increase in 2015*, The Seyfarth ADA Title III News & Insights Blog, January 15, 2016, at: http://www.adatitleiii.com/2016/01/ada-title-iii-lawsuits-continue-to-rise-8-increase-in-2015/ (last visited on April 25, 2017).

[25] *See* Division of the State Architect, Voluntary Certified Access Program, http://www.dgs.ca.gov/dsa/Programs/programCert/casp.aspx (last visited on April 25, 2017).

[26] *Id.*

- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

Fifteen boards and programs exist within the Division of Professions, two boards are within the Division of Real Estate,[27] and one board exists in the Division of Certified Public Accounting.[28] Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes:

- Board of Architecture and Interior Design, part I of ch. 481, F.S.;
- Florida Board of Auctioneers, part VI of ch. 468, F.S.;
- Barbers' Board, ch. 476, F.S.;
- Florida Building Code Administrators and Inspectors Board, part XII of ch. 468, F.S.;
- Construction Industry Licensing Board, part I of ch. 489, F.S.;
- Board of Cosmetology, ch. 477, F.S.;
- Electrical Contractors' Licensing Board, part II of ch. 489, F.S.;
- Board of Employee Leasing Companies, part XI of ch. 468, F.S.;
- Board of Landscape Architecture, part II of ch. 481, F.S.;
- Board of Pilot Commissioners, ch. 310, F.S.;
- Board of Professional Engineers, ch. 471, F.S.;
- Board of Professional Geologists, ch. 492, F.S.;
- Board of Veterinary Medicine, ch. 474, F.S.;
- Home Inspection Services Licensing Program, part XV of ch. 468, F.S.; and
- Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.[29] The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to Parts I and III of ch. 450, F.S.

[27] *See* s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.
[28] *See* s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.
[29] Section 548.003(1), F.S.

III. Effect of Proposed Changes:

Certification of Places of Public Accommodation

The bill creates s. 553.5141, F.S., to provide a voluntary process to certify places of public accommodation as conforming to the requirements of the Americans with Disabilities Act (ADA) after inspection by a qualified expert.

The bill defines a qualified expert as:
- An engineer licensed pursuant to ch. 471, F.S.;
- A certified general contractor licensed pursuant to ch. 489, F.S.;
- A certified building contractor licensed pursuant to ch. 489 F.S.;
- A building code administrator licensed pursuant to ch. 468, F.S.;
- A building inspector licensed pursuant to ch. 468, F.S.;
- A plans examiner licensed pursuant to ch. 468, F.S.;
- An interior designer licensed pursuant to ch. 481, F.S.;
- An architect licensed pursuant to ch. 481, F.S.;
- A landscape architect licensed pursuant to ch. 481, F.S.; or
- Any person who has had a remediation plan related to a claim under the ADA accepted by a federal court in a settlement agreement or court proceeding, or who has been qualified as an expert in the ADA by a federal court.

Owners of Places of Public Accommodation

An owner of a place of public accommodation who has had it inspected by a qualified expert may submit certification of conformity with the Department of Business and Professional Regulation (DBPR) that indicates the place of public accommodation conforms to the ADA. The certification is valid for three years after issuance.

The certification of conformity filed with the DBPR must include:
- The date of inspection.
- The name of the qualified expert or other person who performed the inspection.
- Proof of the inspector's qualification as an expert, including a license number or a sworn statement indicating that the person has at least one order by a federal court accepting an ADA remediation plan of the qualified expert in a settlement or by order of the court.
- A written statement by the qualified expert attesting that the information contained in the remediation plan is accurate.

If the place of public accommodation does not conform to the ADA requirements, the owner of the place of public accommodation may submit with the DBPR a remediation plan, which includes a reasonable amount of time, not to exceed 10 years, for completion of the remediation plan. The remediation plan filed with the DBPR must include:
- The date of the inspection.
- The name of the qualified expert or other person who performed the inspection.
- The specific remedial measures that the place of public accommodation has agreed to undertake.

- The anticipated dates each remedial measure will be initiated and completed.
- Proof of the inspector's qualification as an expert, including a license number or a sworn statement indicating that the person has at least one order by a federal court accepting an ADA remediation plan of the qualified expert in a settlement or by order of the court.
- A written statement by the qualified expert attesting that the information contained in the remediation plan is accurate.

The DBPR must develop and maintain a publically accessible website that provides an electronic registry of certifications of conformity and remediation plans.

Court Consideration of Remediation Plans

The bill requires the courts of this state to consider remediation plans filed with the DBPR to determine whether an ADA claim was filed in good faith and to evaluate the appropriateness of any award of attorney's fees.

Appropriation

The bill appropriates $160,000 ($155,000 in nonrecurring and $5,000 in recurring funds) from the Professional Regulation Trust Fund to the DBPR for the 2017-2018 fiscal year to implement the provisions of this act.

Effective Date

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:

The bill does not specify fees for registration of remediation plans.

Since certificates of conformity are only valid for three years, owners of public places may have to pay for inspections every three years in order to prove they are compliant with the Title III of the Americans with Disabilities Act (ADA).

C. Government Sector Impact:

The bill appropriates the sums of $5,000 in recurring funds and $155,000 in nonrecurring funds from the Professional Regulation Trust Fund for Fiscal Year 2017-2018 to the Department of Business and Professional Regulation (DBPR) for new costs necessary to carry out the provisions of the bill. However, the appropriation included costs of approximately $70,000 to create a system to register licensed experts, which is no longer required in the bill.[30] The computer application used by the Florida Building Commission (commission) is called the Building Code Information System (BCIS). The DBPR anticipates the electronic registry created by the bill will be housed in the BCIS. There will need to be modifications to BCIS to house the electronic registry.[31]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 553.5141 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on April 25, 2017:
The committee substitute:

- Removes the provision in the bill for certification of Americans with Disabilities Act (ADA) experts.
- Defines the term "qualified expert."
- Requires that the certification of conformity with the ADA and the plan of remediation filed with the Department of Business and Professional Regulation (DBPR) must include proof of the qualifications of the expert who conducted the inspection and a statement that the information in the certification of conformity or the remediation plan is complete and accurate.

[30] Email from the Department of Business and Professional Regulation dated April 25, 2017 (on file with the Senate Appropriations Subcommittee on General Government).
[31] *See 2017 Agency Legislative Bill Analysis issued by the DBPR for SB 1398*, dated March 7, 2017 (on file with Senate Committee on Regulated Industries) at pages 6-7.

- Provides an appropriation to the DBPR of $160,000 from the Professional Regulation Trust Fund to implement the provisions in this act.

B. Amendments:

None.

By Senator Stewart

13-01016D-17 20171398__

A bill to be entitled

An act relating to the accessibility of places of public accommodation; creating s. 553.5141, F.S.; providing definitions; requiring the Department of Business and Professional Regulation to establish a program to provide for the certification of certain experts; authorizing such experts to advise and provide certain inspections for places of public accommodation relating to the Americans with Disabilities Act; requiring the department to establish certification requirements; authorizing an owner of a place of public accommodation to request a facility to be inspected for specified purposes; requiring a certified expert to provide the owner of a place of public accommodation a certification of conformity if the facility conforms to specified provisions of the Americans with Disabilities Act; specifying that such certificate is valid for 3 years; specifying that an owner of a place of public accommodation may submit a remediation plan to the department under certain circumstances; providing that a remediation plan is only valid for a certain period of time; requiring a court to consider certain information in specified actions; requiring the department to develop and maintain a website for specified purposes; requiring the department to adopt rules; providing an effective date.

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

13-01016D-17 20171398__

Section 1. Section 553.5141, Florida Statutes, is created to read:

553.5141 Americans with Disabilities Act; certification of experts.—

(1) For purposes of this section:

(a) "Certified expert" means a person certified by the department under subsection (2).

(b) "Commerce" means communication, trade, traffic, transportation, or travel:

1. Among the several states;

2. Between any foreign country or any territory or possession and any state; or

3. Between points in the same state but through another state or foreign country.

(c) "Department" means the Department of Business and Professional Regulation.

(d) "Facility" means all or any portion of buildings, complexes, equipment, parking lots, passageways, roads, rolling stock or other conveyances, sites, structures, walks, or other real or personal property, including the site where the building, equipment, property, or structure is located.

(e) "Place of public accommodation" means a facility operated by a private entity whose operations affect commerce and is a private entity as described in 42 U.S.C. s. 12181(7).

(f) "Private entity" means any nongovernmental entity, such as a company or nonprofit organization, corporation, partnership, any other legal entity, or any natural person.

(g) "Registry" means the registry of certified experts and

of remediation plans filed by places of public accommodation and maintained by the department.

(2)(a) The department shall establish a program to provide certification for experts who have sufficient experience, knowledge, or training to advise places of public accommodation regarding the compliance guidelines applicable to places of public accommodation under subchapter III of the Americans with Disabilities Act, 42 U.S.C. s. 12182. The certified experts may provide inspections of places of public accommodation to determine if barriers to access are present in the facility within the meaning of 42 U.S.C. s. 12182 and the applicable regulations interpreting that chapter.

(b) The department shall establish requirements for experts to qualify for certification under this section.

(3)(a) An owner of a place of public accommodation may request that a facility be inspected by a certified expert. However, use of an expert certified under this section is not required.

(b) If a place of public accommodation conforms to subchapter III of the Americans with Disabilities Act, the certified expert must provide the owner with a certification of conformity which is valid for 3 years after the date of issuance.

(c) If a place of public accommodation does not conform to subchapter III of the Americans with Disabilities Act, the owner may submit a remediation plan to the department which includes:

1. The date the place of public accommodation was inspected.

2. The name of the certified expert or other person who

inspected the place of public accommodation.

3. Identification of specific remedial measures that the place of public accommodation will undertake.

4. The anticipated dates of initiation and completion for each remedial measure that the place of public accommodation has agreed to undertake.

(d) A remediation plan submitted under paragraph (c) is only valid for 10 years after its submission to the department.

(e) In any action brought in this state alleging a violation of subchapter III of the Americans with Disabilities Act, 42 U.S.C. s. 12182, the courts shall consider any remediation plan filed by the place of public accommodation before the filing of the plaintiff's complaint in determining if the plaintiff's complaint was filed in good faith and if the plaintiff is entitled to attorney fees and costs.

(4) The department shall develop and maintain on its website, accessible to the public, an electronic registry of certifications of conformity and remediation plans.

(5) The department shall adopt rules to administer this section.

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 18, 2017

I respectfully request that **Senate Bill #1398**, relating to Accessibility of Places of Public Accomodation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Linda Stewart

Senator Linda Stewart
Florida Senate, District 13

File signed original with committee office

S-020 (03/2004)

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

1398
Bill Number (if applicable)

Topic ADA Compliance

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title VP & General Counsel

Address 227 S. Adams St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 222-4082

Email samantha@frf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Retail Federation

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

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

1389
Bill Number (if applicable)

Topic Places of Public Accommodation

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

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)

4/25/17
Meeting Date

1398
Bill Number (if applicable)

Topic ADA

Amendment Barcode (if applicable)

Name Caralyn Johnson

Job Title Policy Director

Address 136 S Bronough St
Street
Tallahassee
City *State* *Zip*

Phone 521-1200

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

April 25th 2017
Meeting Date

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

SB 1398
Bill Number (if applicable)

Topic Accessibility of Places - Public Accommodations
Amendment Barcode (if applicable)

Name Richard Turner

Job Title General Counsel

Address 230 S. Adams
Street

Phone 850 224-2250

Tallahassee FL 32301
City State Zip

Email RTurner@FRLA.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Restaurant & 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)

04-25-2017
Meeting Date

1398
Bill Number (if applicable)

Topic Public Accomnodations

Amendment Barcode (if applicable)

Name Michael Daniels

Job Title Executive Director

Address 3333 W Pensacola Street
Street
Tallahassee FL 32304
City *State* *Zip*

Phone 850-487-3278

Email mdaniels@faastinc.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FAAST (Florida Alliance for Assistive Services and Technology)

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)

4/25/2017
Meeting Date

1398
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian P. Pitts

Job Title Trustee

Address 1119 Newton Ave S.
Street

Phone 727/897-9291

St Petersburg FL 33705
City *State* *Zip*

Email justice2jesus@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

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

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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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/CS/SB 150
INTRODUCER:	Appropriations Committee; Judiciary Committee; Criminal Justice Committee; and Senator Steube and others
SUBJECT:	Controlled Substances
DATE:	April 26, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	**Fav/CS**
2.	Brown	Cibula	JU	**Fav/CS**
3.	McAuliffe	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 150 addresses scheduling for controlled substances and punishment for controlled substance offenses. Specifically, the bill:

- Provides that a person 18 years of age or older commits felony murder if he or she unlawfully distributes any specified controlled substance, including a specified fentanyl-related substance, and the distribution is proven to be the proximate cause of death of the user;
- Includes in Schedule I a class of fentanyl derivatives and five substances that were originally developed for legitimate research but that have now emerged in the illicit drug market;
- Punishes unlawful possession of 10 grams or more of certain Schedule II substances, including certain fentanyl-related substances;
- Adds codeine, an isomer of hydrocodone, to a current provision punishing trafficking in hydrocodone, and adds additional phenethylamines and phencyclidines to current provisions punishing trafficking in phencyclidine and phenethylamine;
- Punishes trafficking in fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines, through imposing mandatory minimum terms of imprisonment and mandatory fines;
- Authorizes certain crime laboratory personnel to possess, store, and administer emergency opioid antagonists used to treat opioid overdoses; and
- Provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (chapter 893, Florida Statutes), or any portion thereof, include all subsequent amendments to the act.

The Criminal Justice Impact Conference (CJIC) has not yet reviewed the bill; however, the bill is substantively identical to CS/HB 477, which the CJIC estimates will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2017.

II. Present Situation:

Florida's Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the statute. The most important factors in determining which schedule may apply to a substance are the "potential for abuse"[1] of the substance and whether there is a currently accepted medical use for the substance.[2] The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and have no currently accepted medical use in the United States. This schedule includes cannabis and heroin.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States. This schedule includes cocaine, codeine, and fentanyl.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States. This schedule includes stimulants and anabolic steroids.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to the substances in Schedule III and have a currently accepted medical use in the United States. This schedule includes benzodiazepines and barbiturates.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States. This schedule includes mixtures that contain small quantities of opiates and codeine.

Punishment of Prohibited Drug Acts

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance. The penalty for violating s. 893.13, F.S., depends on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred. For example, selling a controlled substance listed in s. 893.03(1)(c), F.S.,

[1] Pursuant to s. 893.035(3)(a), F.S., "potential for abuse" means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user's health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user's own initiative rather than on the basis of professional medical advice.
[2] *See* s. 893.03, F.S.

which includes many synthetic controlled substances, is a third degree felony.[3] However, if that substance is sold within 1,000 feet of a child care facility or secondary school, the violation is a second-degree felony.[4]

Drug trafficking, punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state, or knowingly being in actual or constructive possession of, certain controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of controlled substances. The quantity of the substance must meet a specified weight threshold. Most drug trafficking offenses are first degree felonies[5] and are subject to a mandatory minimum term and a mandatory fine, which is determined by the weight range applicable to the quantity of the substance involved in the trafficking.

Fentanyl and Related Drugs

Fentanyl is a Schedule II controlled substance.[6] Some fentanyl analogs[7] or derivatives[8], such as alfentanil,[9] carfentanil,[10] and sufentanil[11] are also Schedule II controlled substances.[12] It is a second degree felony to possess alfentanil, carfentanil, or fentanyl with the intent to sell,

[3] Section 893.13(1)(a)2., F.S. A third-degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S.
[4] Section 893.13(1)(c)2., F.S. A second-degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both. *Id.*
[5] A first-degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000. However, when specifically provided by statute, a first-degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. *Id.*
[6] Section 893.03(2)(b)9., F.S.
[7] "An analog is a drug whose structure is related to that of another drug but whose chemical and biological properties may be quite different." Chemistry-Dictionary.com, http://www.chemistry-dictionary.com/definition/analog.php (last visited on March 28, 2017).
[8] A "derivative" is "a chemical compound that may be produced from another compound of similar structure in one or more steps, as in replacement of H by an alkyl, acyl, or amino group." Drugs.com, https://www.drugs.com/dict/derivative.html (last visited Apr. 14, 2017).
[9] Alfentanil is "a short-acting opioid anesthetic and analgesic derivative of [fentanyl]. It produces an early peak analgesic effect and fast recovery of consciousness. Alfentanil is effective as an anesthetic during surgery, for supplementation of analgesia during surgical procedures, and as an analgesic for critically ill patients." "Alfentanil," MeSH, National Center for Biotechnology Information, U.S. National Library of Medicine, https://www.ncbi.nlm.nih.gov/mesh/?term=alfentanil (last visited Apr. 14, 2017).
[10] Carfentanil is a fentanyl derivative. "Fentanyl drug profile," European Monitoring Centre for Drug and Drug Addiction, http://www.emcdda.europa.eu/publications/drug-profiles/fentanyl (last visited Apr. 14, 2017). The drug "is one of the most potent opioids known (also the most potent opioid used commercially)." "Carfentanil," National Center for Biotechnology Information, U.S. National Library of Medicine, https://pubchem.ncbi.nlm.nih.gov/compound/carfentanil#section=Top (last visited Apr. 14, 2017). The drug "has a quantitative potency approximately 10,000 times that of morphine and 100 times that of fentanyl, with activity in humans starting at about 1 microgram. It is marketed … as a general anesthetic agent for large animals. Carfentanil is intended for large-animal use only as its extreme potency makes it inappropriate for use in humans. Currently sufentanil, approximately 10-20 times less potent (500 to 1000 times the efficacy of morphine per weight) than carfentanil, is the maximum strength fentanyl analog for use in humans." *Id.*
[11] Sufentanil is a fentanyl derivative. "Fentanyl drug profile," European Monitoring Centre for Drug and Drug Addiction, http://www.emcdda.europa.eu/publications/drug-profiles/fentanyl (last visited Apr. 14, 2017). The drug "is an opioid analgesic that is used as an adjunct in anesthesia, in balanced anesthesia, and as a primary anesthetic agent." "Sufentanil," National Center for Biotechnology Information, U.S. National Library of Medicine, https://pubchem.ncbi.nlm.nih.gov/compound/41693 (last visited Apr. 14, 2017).
[12] Section 893.03(2)(b)1., 6., and 29., F.S.

manufacture, or deliver them, or to unlawfully sell, manufacture, or deliver any of these substances.[13]

The National Institute on Drug Abuse provides that "Fentanyl is a powerful synthetic opioid analgesic that is similar to morphine but is 50 to 100 times more potent."[14] When prescribed by a physician, fentanyl is typically used to treat patients with severe pain or to manage pain after surgery and is administered via injection, transdermal patch, or in lozenges.[15] Although prescription fentanyl can be misused, most overdoses and related deaths have been linked to illicitly-manufactured fentanyl, including fentanyl analogs.[16] Illicitly-manufactured fentanyl is produced in clandestine laboratories and may be sold as a powder, spiked on blotter paper, mixed with heroin, or sold as tablets made to look like other, less potent opioids.[17] Fentanyl and its analogs may be mixed into other drugs and sold without the customer's knowledge of the presence of fentanyl.[18]

According to a recent report by the Centers for Disease Control and Prevention, during 2013–2014, fentanyl submissions[19] increased 494 percent in Florida (from 33 to 196), concurrent with a 115 percent increase in fentanyl deaths in Florida (from 185 to 397).[20] Fentanyl analogs were specifically implicated in 49 drug overdose deaths in Florida between January and June 2015.[21] According to the 2015 Annual Report (dated September 2016) of the Florida Medical Examiners, there were 911 deaths in which fentanyl was present (206) or deemed the cause of death (705).[22] Further, 99 of the deaths associated with fentanyl were ones in which the deceased had only that drug in their system, while the rest were in combination with another drug.[23]

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[13] Section 893.13(1)(a)1., F.S.
[14] "DrugFacts" (revised June 2016), National Institute on Drug Abuse, https://www.drugabuse.gov/publications/drugfacts/fentanyl (last visited Apr. 14, 2017). "The estimated lethal dose of fentanyl in humans is 2 mg." "Fentanyl drug profile," European Monitoring Centre for Drug and Drug Addiction, http://www.emcdda.europa.eu/publications/drug-profiles/fentanyl (last visited Apr. 14, 2017).
[15] *Id*.
[16] "Increases in Fentanyl-Related Overdose Deaths-Florida and Ohio, 2013-2015," *Morbidity and Mortality Weekly Report* (August 26, 2016), Centers for Disease Control and Prevention, https://www.cdc.gov/mmwr/volumes/65/wr/mm6533a3.htm (last visited Apr. 14, 2017).
[17] "DrugFacts" (revised June 2016), National Institute on Drug Abuse, https://www.drugabuse.gov/publications/drugfacts/fentanyl (last visited Apr. 14, 2017).
[18] For example, the National Institute on Drug Abuse has noted that "it is likely that carfentanil is being added to mixtures of heroin and other street drugs." "Alert Issued in Ohio for Human Use of Animal Sedative Carfentanil, with Cases Also Seen in Florida" (August 23, 2016), National Institute on Drug Abuse, https://www.drugabuse.gov/drugs-abuse/emerging-trends-alerts (last visited Apr. 14, 2017).
[19] In this context, "submissions" means "drug products obtained by law enforcement that tested positive for fentanyl." *Id.*
[20] "Increases in Fentanyl-Related Overdose Deaths-Florida and Ohio, 2013-2015," *Morbidity and Mortality Weekly Report* (August 26, 2016), Centers for Disease Control and Prevention, https://www.cdc.gov/mmwr/volumes/65/wr/mm6533a3.htm (last visited Apr. 14, 2017).
[21] *Id*.
[22] *Drugs Identified in Deceased Persons* (2015 Annual Report) (September 2016), p. 3, Florida Medical Examiners Commission, http://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms.aspx (last visited Apr. 14, 2017).
[23] *Id*. at p. 30.

Illicit Use of Compounds Developed for Forensic and Research Applications

Compounds are often developed for legitimate forensic and research applications. However, some of these compounds later emerge in the illicit drug market. The following substances are examples of those substances:

- W-15, 4-chloro-N- [1- (2-phenylethyl) -2-piperidinylidene] -benzenesulfonamide.
- W-18, 4-chloro-N- [1-[2-(4-nitrophenyl) ethyl] -2-piperidinylidene] -benzenesulfonamide.
- AH-7921, 3, 4-dichloro-N- [[(1-dimethylamino) cyclohexyl]methyl] -benzamide.
- U47700, trans-3, 4-dichloro-N- [2-(dimethylamino) cyclohexyl] -N-methyl-benzamide.
- MT-45,1-cyclohexyl-4- (1,2-diphenylethyl) -piperazine, dihydrochloride.

W-15 and W-18 are "two of a series of drugs with analgesic properties of unknown origin synthesized in Canada in 1981."[24] AH-7921 is an experimental opioid agonist[25] developed and patented by the former pharmaceutical company Allen & Hanburys.[26] U-47700 "is an opioid analgesic drug developed by the pharmaceutical company Upjohn in the 1970s and is structurally related to AH-7921[.]"[27] "MT-45 is a piperazine derivate originally synthesized by a pharmaceutical company in the 1970s."[28]

U-47700 is currently a Schedule I controlled substance pursuant to emergency rule[29] of the Florida Attorney General's Office.[30]

Emergency Treatment for Suspected Opioid Overdose

In addition to being deadly to drug users, fentanyl-related drugs pose a dangerous threat to first responders and law enforcement officers, because a lethal dose can be accidentally inhaled or absorbed through the skin.[31] The U.S. Drug Enforcement Administration has warned laboratory

[24] Mohr, A., Friscia, M., Papsun, D., Kacinko, S., Buzby, D., and Logan, B., "Analysis of Novel Synthetic Opioids U-47700, U-50488 and Furanyl Fentanyl by LC–MS/MS in Postmortem Casework" (2016) 40(9): 709, 716 (footnote and citation omitted), *Journal of Analytical Toxicology*, https://academic.oup.com/jat/article/40/9/709/2527448/Analysis-of-Novel-Synthetic-Opioids-U-47700-U (last visited Apr. 14, 2017). "Emerging evidence suggests that W-18 is not an opioid." "Novel Synthetic Opioids in Counterfeit Pharmaceuticals and other Illicit Street Drugs" (June 2016), *CCENDU Bulletin*, Canadian Centre on Substance Abuse, http://www.ohrdp.ca/ccendu-bulletin-novel-synthetic-opioids-in-counterfeit-pharmaceuticals-and-other-illicit-street-drugs/ (last visited Apr. 14, 2017).

[25] Medicine Net defines the term "agonist" as a substance that acts like another substance and therefore stimulates an action, http://www.medicinenet.com/script/main/art.asp?articlekey=7835 (last visited Apr. 14, 2017).

[26] Kjellgren, A., Jacobsson K., and Soussan C., "The Quest for Well-Being and Pleasure: Experiences of the Novel Synthetic Opioids AH-7921 and MT-45, as Reported by Anonymous Users Online" (2016) 7(4): 1 (footnote and citation omitted), *Journal of Addiction Research & Therapy*, https://www.omicsonline.org/open-access/the-quest-for-wellbeing-and-pleasure-experiences-of-the-novel-syntheticopioids-ah7921-and-mt45-as-reported-by-anonymous-users-onli-2155-6105-1000287.php?aid=77568 (last visited Apr. 14, 2017).

[27] See footnote 24.

[28] *Id.* (footnote and citation omitted).

[29] Section 893.035(7), F.S.

[30] Notice of Emergency Rule, 2ER16-1 ("Addition of U-47700 (3,4-dichloro-N-(2-(dimethylamino)cylcohexyl]-N-methylbenzamide) [t]o Schedule I, Subsection 893.03(1)(a), F.S.") and Certification of Department of Legal Affairs Emergency Rule Filed with the Department of State (filed September 27, 2016), Department of Legal Affairs (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

[31] "DEA Issues Carfentanil Warning to Police and Public" (September 22, 2016), U.S. Drug Enforcement Administration, https://www.dea.gov/divisions/hq/2016/hq092216.shtml (last visited Apr. 14, 2017).

personnel to take measures to protect themselves from accidental exposure and to immediately administer Naloxone, a drug used to treat opioid overdoses, in the event of exposure.[32]

Section 381.887, F.S., authorizes certain emergency responders[33] to possess, store, and administer emergency opioid antagonists as clinically indicated. Crime laboratory personnel are not referenced in the statute.

Synthetic Cannabinoids, Cathinones, and Phenethylamines

Section 893.03(1)(c), F.S., lists numerous substances described as "hallucinogenic substances." Many of them appear to be synthetic cannabinoids, cathinone derivatives, and phenethylamines. "Synthetic [c]annabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but … they are cannabinoid-like in their activity."[34]

Cathinone is a Schedule I controlled substance.[35] The "molecular architecture" of cathinone "can be altered to produce a series of different compounds which are closely structurally related to cathinone. Together these are known as the 'cathinones' or 'cathinone derivatives.'"[36]

"Phenethylamines" is a broad category of "psychoactive substances."[37] Probably the most well-known phenethylamine is 3,4-Methylenedioxymethamphetamine (MDMA), which is often referred to by the street name "Ecstasy." Phenethylamines include "the '2C' series of hallucinogenic phenethylamines" (referring to "the chemical structure consisting of two carbon atoms between the phenyl and amine moieties").[38] A new group of 2C compounds, referred to as the "N-methoxybenzyl-substituted phenethylamines (NBOMe)" have emerged on the illicit drug market.[39] These compounds were "[i]nitially synthesized for research purposes," and "are thought to be more potent than some of the conventional hallucinogens."[40]

Felony Murder by Drug Distribution

Section 782.04(1)(a)3., F.S., provides that if a person 18 years of age or older unlawfully distributes certain controlled substances that are later proven to be the proximate cause of the

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[32] *Id.*
[33] Emergency responders include, but are not limited to, law enforcement officers, paramedics, and emergency medical technicians. Section 381.887(4), F.S.
[34] "Synthetic Cannabinoids Drug Information," Redwood Toxicology Laboratory, https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last visited Apr. 14, 2017).
[35] Section 893.03(1)(c)8. F.S.
[36] *Consideration of the cathinones* (March 2010), p. 6, Advisory Council on the Misuse of Drugs, United Kingdom, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/119173/acmd-cathinodes-report-2010.pdf (last visited Apr. 14, 2017).
[37] Sanders B., Lankenau S., Bloom J., and Hathazi D., "'Research chemicals': Tryptamine and Phenethylamine Use Among High Risk Youth" (2008) 43(3-4): 389, *Substance Use & Misuse*, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/ (last visited Apr. 14, 2017).
[38] "NBOMe Drugs," *CALL US …* (official newsletter) (Spring 2015) 13(2), California Poison Control System, http://www.calpoison.org/hcp/2015/callusvol13no2.htm (last visited Apr. 14, 2017).
[39] *Id.*
[40] *Id.*

death of a drug user, the distributer commits murder in the first degree, a capital felony.[41] The controlled substances currently included in this subparagraph are:

- A substance controlled under s. 893.03(1), F.S.;
- Cocaine;
- Opium or any synthetic or natural salt, compound, derivative, or preparation of opium; and
- Methadone.

Under s. 782.04(1)(a)3., F.S., a defendant does not need to intend an act of homicide, have knowledge of a drug overdose, or be present when it occurs. In order to be guilty of this offense, the defendant need only intend to unlawfully distribute one of the prohibited drugs that results in a death caused by the drug.[42]

III. Effect of Proposed Changes:

The bill, which takes effect October 1, 2017, addresses scheduling for controlled substances and punishment for controlled substance offenses. A full description of the provisions of the bill is provided below.

Emergency Treatment for Suspected Opioid Overdose (Section 1)

Section 1 amends s. 381.887, F.S., authorize certain crime laboratory personnel to possess, store, and administer emergency opioid antagonists as clinically indicated. These crime laboratory personnel include, but are not limited to:

- Analysts;
- Evidence intake personnel; and
- Their supervisors.

Crime laboratory personnel will be authorized to administer the medication without a prescription, allowing them to respond in the event of accidental exposure in the course of their job performance.

Felony Murder by Drug Distribution (Section 2)

Section 2 amends s. 782.04(1)(a)3., F.S., to add four substances to the offense of felony murder by drug distribution. As a result of this change, a person 18 years of age or older commits felony murder if he or she unlawfully distributes any of the following substances and the distribution of the substance is proven to be the proximate cause of the death of the user of the substance:

- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil; or

[41] A capital felony is generally punishable by life imprisonment or a death sentence as provided in s. 921.141, F.S. "First-degree murder by drug distribution has been a recognized offense since 1972. *See* ch. 76-141, § 1, Laws of Fla.; ch. 72-724, § 3, Laws of Fla." *Pena v. State*, 829 So. 2d 289, 291 (Fla. 2d 2002), approved *Pena v. State*, 901 So. 2d 781 (Fla. 2005), rehearing denied *Pena v. State*, 2005 Fla. LEXIS 994 (Fla. Apr. 25, 2005).

[42] *Pena v. State*, 829 So. 2d at 294.

- A controlled substance analog, as described in s. 893.0356, F.S.,[43] of any described substance (or a substance currently listed this subparagraph),[44] and mixtures containing any of those substances.

Cross-References to the Florida Comprehensive Drug Abuse Prevention and Control Act (Section 3)

Section 3 creates s. 893.015, F.S., to specify that the purpose of ch. 893, F.S., is to comprehensively address drug abuse prevention and control in this state, and, as such, unless expressly provided otherwise, a specific reference to ch. 893, F.S., or any section thereof incorporates all subsequent amendments to ch. 893, F.S., or any section thereof.[45]

Scheduling of Controlled Substances (Section 4)

Section 4 amends s. 893.03(1)(a), F.S., to add fentanyl derivatives to Schedule I, including:
- A general class by chemical structure (a 4-anilidopiperidine structure or "core") and a description of chemical substitutions that can be made to the structure to remain an illicit member of the structure family;[46]
- Twenty-three substances specifically identified as fentanyl derivatives; and
- An exclusion for alfentanil, carfentanil, fentanyl, and sufentanil so as to not alter their current placement in Schedule II.

Section 4 amends s. 893.03(1)(c), F.S., to add five new substances to Schedule I. These substances, which have emerged in the illicit drug market, were originally developed for forensic and research applications:
- W-15, 4-chloro-N- [1- (2-phenylethyl) -2-piperidinylidene] -benzenesulfonamide;
- W-18, 4-chloro-N- [1- [2-(4-nitrophenyl) ethyl] -2-piperidinylidene] -benzenesulfonamide;
- AH-7921, 3, 4-dichloro-N-[[1-(dimethylamino) cyclohexyl] methyl] -benzamide;
- U47700, trans-3, 4-dichloro-N- [2-(dimethylamino) cyclohexyl] -N-methyl-benzamide; and
- MT-45, 1-cyclohexyl-4- (1, 2-diphenylethyl) -piperazine, dihydrochloride.

[43] A "controlled substance analog" is a substance which, due to its chemical structure and potential for abuse, if the substance: (1) is substantially similar to that of a Schedule I or Schedule II controlled substance; and (2) has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II. Section 893.0356(2)(a), F.S.

[44] Those substances are: a substance controlled under s. 893.03(1)(c), F.S.; cocaine; opium or any synthetic or natural salt, compound, or derivative, or preparation of opium; and methadone.

[45] "Legislative enactments frequently incorporate portions of the Florida Statutes by reference. A cross-reference to a general body of law (without reference to a specific statute) incorporates the referenced law and any subsequent amendments to or repeal of the referenced law." Preface to the official 2016 Florida Statutes, p. viii (case citations omitted). "In contrast, as a general rule, a cross-reference to a specific statute incorporates only the language of the referenced statute as it existed at that time, unaffected by any subsequent amendments to or repeal of the incorporated statute." *Id.* To avoid the necessity of reenacting specific references to sections within certain chapters of law, the Legislature has codified provisions that allow for all specific references to sections of law within certain chapters to automatically incorporate all subsequent amendments. Such chapters of law include ch. 435, F.S. ("Employment Screening") and ch. 938, F.S. ("Court Costs."). *See* ss. 435.01 and 938.31, F.S.

[46] For example "[w]ith or without substitution of the piperidine ring for a pyrrolidine ring, perhydroazepine ring, or azepine ring."

Unlawful Drug Acts Involving Certain Schedule II Controlled Substances (Section 5)

Section 5 amends s. 893.13(6)(c), F.S., which currently provides that it is a first degree felony to possess more than 10 grams of certain Schedule I controlled substances, to include certain Schedule II substances (substances listed in s. 893.03(2)(b), F.S., which include fentanyl and fentanyl derivatives).

Trafficking in Codeine (Section 6)

Section 6 amends s. 893.135(1)(c)2., F.S., which currently punishes "trafficking in hydrocodone," to add a specific scheduling reference for hydrocodone and to:

- Add codeine,[47] a Schedule II substance[48] and an isomer[49] of hydrocodone,[50] to the controlled substances punishable under this subparagraph; and
- Remove "derivative, isomer, or salt of an isomer" related to hydrocodone from those punishable under this subparagraph.[51]

By adding codeine to the trafficking in hydrocodone provision, codeine becomes subject to current penalties for trafficking in hydrocodone. Currently, trafficking in 14 grams or more of hydrocodone is generally a first degree felony and is subject to the following mandatory minimum terms of imprisonment and mandatory fines:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of $50,000, if the quantity involved is 14 grams or more, but less than 28 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of $100,000, if the quantity involved is 28 grams or more, but less than 50 grams;
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of $500,000, if the quantity involved is 50 grams or more, but less than 200 grams; and
- A 25-year mandatory minimum term of imprisonment and a mandatory fine of $750,000, if the quantity involved is 200 grams or more, but less than 30 kilograms.[52]

Further, trafficking in 30 kilograms or more of hydrocodone is "trafficking in illegal drugs," a first degree felony punishable by life imprisonment.[53] However, a person commits the capital

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[47] Codeine is an opioid, typically prescribed as a pain reliever and cough suppressant, which has a high potential for addiction. "The Effects of Codeine Use," DrugAbuse.com, http://drugabuse.com/library/the-effects-of-codeine-use/ (last visited Apr. 14, 2017).
[48] Section 893.03(2)(a)1.g., F.S.
[49] An isomer is "one of two or more compounds, radicals, or ions that contain the same number of atoms of the same elements but differ in structural arrangement and properties." Merriam-Webster (online dictionary), https://www.merriam-webster.com/dictionary/isomer (last visited Apr. 14, 2017).
[50] Email from Michelle DePaola, Chemistry Technical Leader, Florida Department of Law Enforcement, to staff of the House Criminal Justice Subcommittee (February 23, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).
[51] *Id.* This language is removed because codeine is the only known isomer of hydrocodone and is specifically scheduled in s. 893.03(2)(a)1.g., F.S.
[52] Section 893.135(1)(c)2.a.-d., F.S.
[53] Section 893.135(1)(c)4., F.S.

felony[54] of "trafficking in illegal drugs," which is also punishable by a mandatory fine of $500,000, if:

- The court determines that, in addition to committing the act:
  - The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or
  - The person's conduct in committing that act led to a natural, though not inevitable, lethal result.[55]
- A person knowingly brings into Florida 60 kilograms or more of hydrocodone (or any another specified substance), knowing that the probable result of such importation would be the death of any person.[56]

Trafficking in Oxycodone (Section 6)

Section 6 amends s. 893.135(1)(c)3., F.S., which currently punishes "trafficking in oxycodone," to add a specific scheduling reference for oxycodone and to remove the words "derivative, isomer, or salt of an isomer," which currently appear in this subparagraph, because there have not been any drugs identified as a derivative, isomer, or salt of an isomer of oxycodone.[57]

Trafficking in Fentanyl (Section 6)

Section 6 creates s. 893.135(1)(c)4., F.S., which punishes "trafficking in fentanyl." Trafficking in fentanyl, a first degree felony, is knowingly selling, purchasing, manufacturing, delivering, or bringing into the state, or knowingly being in actual or constructive possession of, 4 grams or more of:

- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil;
- A fentanyl derivative as described in s. 893.03(1)(a)62., F.S. (added by Section 1 of the bill);
- A controlled substance analog, as described in s. 893.0356, F.S., of any described substance; or
- A mixture containing any described substance.

This offense includes mandatory minimum terms of imprisonment and mandatory fines, which are based on the quantity involved in the trafficking:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of $50,000, if the quantity involved is 4 grams or more, but less than 14 grams;
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of $100,000, if the quantity involved is 14 grams or more, but less than 28 grams; and

[54] A capital drug trafficking felony is punishable by life imprisonment or a death sentence as provided in s. 921.142, F.S.
[55] Section 893.135(1)(c)4., F.S. ("trafficking in illegal drugs").
[56] Section 893.135(1)(c)5., F.S. ("capital importation of illegal drugs").
[57] Email from Michelle DePaola, Chemistry Technical Leader, Florida Department of Law Enforcement to staff of the House Criminal Justice Subcommittee (February 23, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

- A 25-year mandatory minimum term of imprisonment and a mandatory fine of $500,000, if the quantity involved is 28 grams or more.

Trafficking in Phencyclidine (Section 6)

Section 6 amends s. 893.135(1)(d), F.S., which currently punishes "trafficking in phencyclidine," to add a specific scheduling reference for phencyclidine and to add the following substances to those currently punishable under this paragraph:

- A substance identified as a "substituted phenylcyclohexylamine" in s. 893.03(1)(c)195., F.S.;[58]
- Five analogs of phencyclidine described in s. 893(1)(c)13., 32., 38., 103., and 146., F.S.; and
- A mixture containing any described substance.

By adding these substances to the trafficking in phencyclidine provision, these substances become subject to current penalties for trafficking in phencyclidine. Currently, trafficking in 28 grams or more of phencyclidine is generally a first degree felony and is subject to the following mandatory minimum terms of imprisonment and mandatory fines:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of $50,000, if the quantity involved is 28 grams or more, but less than 200 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of $100,000, if the quantity involved is 200 grams or more, but less than 400 grams; and
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of $250,000, if the quantity involved is 400 grams or more.[59]

Further, a person commits a capital felony, which is also punishable by a mandatory fine of $250,000, if the person knowingly brings into Florida 800 grams or more of phencyclidine, knowing that the probable result of such importation would be the death of any person.[60]

Trafficking in Phenethylamines (Section 6)

Section 6 amends s. 893.135(1)(k), F.S., which currently punishes "trafficking in phenethylamines." This paragraph currently lists a number of phenethylamines described in s. 893.03(1)(c), F.S. The bill removes these listed substances and refers to them by their specific scheduling reference in s. 893.03(1)(c), F.S. The bill also adds the following substances:

- A substance described in s. 893.03(1)(c)21., 43.-45., 58., 72.-80., 81.-86., 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.–163., or 187.-189., F.S., which include phenethylamines and cathinones;
- A substituted cathinone described in s. 893.03(1)(c)191., F.S.;
- A substituted phenethylamine described in s. 893.03(1)(c)192., F.S.; and

[58] Phenylcyclohexylamine is a relative of phencyclidine. The term "substituted" is a general term that means a portion of the chemical structure is removed and replaced with a different chemical structure. There are many permutations. The term "substituted phenylcyclohexylamine" can have many different substitutions but the base structure is that of phenylcyclohexylamine. E-mail from staff of the Florida Department of Law Enforcement to staff of the Senate Committee on Criminal Justice (March 28, 2017) (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

[59] Section 893.13(1)(d)1.a.-c., F.S.

[60] Section 893.13(1)(d)2., F.S.

- A mixture containing any described substance or containing the salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers of any described substance.

By adding these substances to the trafficking in phenethylamines provision, these substances become subject to current penalties for trafficking in phenethylamines. Trafficking in 10 grams or more of any listed substance is generally a first degree felony and is subject to the following mandatory minimum terms of imprisonment and mandatory fines:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of $50,000, if the quantity involved is 10 grams or more, but less than 200 grams.
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of $100,000, if the quantity involved is 200 grams or more, but less than 400 grams.
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of $250,000, if the quantity involved is 400 grams or more.[61]

Further, a person commits a capital felony, which is also punishable by a mandatory fine of $250,000, if the person knowingly manufactures or brings into Florida 30 kilograms or more of any previously-described substance, knowing that the probable result of such manufacture or importation would be the death of any person.[62]

Trafficking in Synthetic Cannabinoids (Section 6)

Section 6 creates s. 893.135(1)(m), F.S., which punishes "trafficking in synthetic cannabinoids." Trafficking in synthetic cannabinoids, which is a first degree felony, is knowingly selling, purchasing, manufacturing, delivering, or bringing into Florida, or knowingly being in actual or constructive possession of, 280 grams or more of:

- A substance described in s. 893.03(1)(c)30., 46.-50., 114.-142., 151.-156., 166.-173., or 176.-186., F.S. (synthetic cannabinoids);
- A synthetic cannabinoid described in s. 893.03(1)(c)190., F.S.; or
- A mixture containing any described substance.

This offense includes mandatory minimum terms of imprisonment and mandatory fines, which are based on the quantity involved in the trafficking:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of $50,000, if the quantity involved is 280 grams or more, but less than 500 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of $100,000, if the quantity involved is 500 grams or more, but less than 1 kilogram;
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of $200,000, if the quantity involved is 1 kilogram or more, but less than 30 kilograms; and
- A 25-year mandatory minimum term of imprisonment and a mandatory fine of $750,000, if the quantity involved is 30 kilograms or more.

[61] Section 893.135(1)(k)2., F.S
[62] Section 893.135(1)(k)3., F.S

Trafficking in N-benzyl Phenethylamines (Section 6)

Section 6 creates s. 893.135(1)(n), F.S., which punishes "trafficking in n-benzyl phenethylamines." Trafficking in n-benzyl phenethylamines, which is a first degree felony, is knowingly selling, purchasing, manufacturing, delivering, or bringing into Florida, or knowingly being in actual or constructive possession of, 14 grams or more of:

- A substance described in s. 893.03(1)(c)164., 174., or 175., F.S. (n-benzyl phenethylamines);
- A n-benzyl phenethylamine compound, as described in s. 893.03(1)(c)193., F.S.; or
- A mixture containing any described substance.

This offense includes mandatory minimum terms of imprisonment and mandatory fines, which are based on the quantity involved in the trafficking:

- A 3-year mandatory minimum term of imprisonment and a mandatory fine of $50,000, if the quantity involved is 14 grams or more, but less than 100 grams;
- A 7-year mandatory minimum term of imprisonment and a mandatory fine of $100,000, if the quantity involved is 100 grams or more, but less than 200 grams; and
- A 15-year mandatory minimum term of imprisonment and a mandatory fine of $500,000, if the quantity involved is 200 grams or more.

Further, a person commits a capital felony, which is also punishable by a mandatory fine of $500,000, if the person knowingly manufactures or brings into Florida 400 grams or more of a n-benzyl phenethylamine compound, knowing that the probable result of such importation would be the death of any person.

Ranking Trafficking Offenses (Section 7)

Section 7 amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank trafficking offenses that are created by the bill (described below).

The following trafficking offenses are ranked in Level 7:

- Trafficking in fentanyl (4 grams or more, but less than 14 grams);
- Trafficking in synthetic cannabinoids (280 grams or more, but less than 500 grams);
- Trafficking in synthetic cannabinoids (500 grams or more, but less than 1,000 grams); and
- Trafficking in n-benzyl phenethylamines, (14 grams or more, but less than 100 grams).

The following trafficking offenses are ranked in Level 8:

- Trafficking in fentanyl (14 grams or more, but less than 28 grams);
- Trafficking in synthetic cannabinoids (1,000 grams or more, but less than 30 kilograms); and
- Trafficking in n-benzyl phenethylamines (100 grams or more, but less than 200 grams).

The following trafficking offenses are ranked in Level 9:

- Trafficking in fentanyl (28 grams or more);
- Trafficking in synthetic cannabinoids (30 kilograms or more); and
- Trafficking in n-benzyl phenethylamines (200 grams or more).

The bill also makes technical corrections to language describing some current trafficking offenses ranked in the chart.

Reenactments (Sections 8 to 18)

Sections 8 to 18 reenact, respectively, ss. 39.806, 63.089, 95.11, 775.082, 775.0823, 921.16, 948.06, 948.062, 985.265, 1012.315, and 1012.467, F.S., for the purpose of incorporating amendments made by the bill to various statutes.

Effective Date

The bill takes effect 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 Criminal Justice Impact Conference (CJIC) has not reviewed the provisions of the bill involving felony murder by drug distribution (Section 2), controlled substances scheduling (Section 4), and controlled substance offenses (Sections 5 to 7). However, those provisions are identical to provisions in CS/HB 477, which the CJIC estimates will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).[63]

[63] E-mail, dated March 28, 2017, to staff of the Senate Committee on Criminal Justice from staff of the Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice and the Senate Committee on Judiciary).

One person was charged and sentenced to prison for drug-related first degree murder (sentence length of 24 months). In FY 2015-2016, one person was arrested for selling fentanyl, and two people received a conviction/adjudication withheld. DOC does not track the number of admissions to prison for fentanyl, so that population is not known. Per the FDLE, citing the Florida Medical Examiners' 2015 Annual Report,[64] there were 911 deaths in which fentanyl was present or deemed the cause of death. Further, 99 of the deaths associated with fentanyl only had that in their system, while the rest were in combination with another drug.

In FY 2015-2016, there were 44[65] offenders sentenced for trafficking in hydrocodone and oxycodone, and 34 were sentenced to prison (mean sentence length of 70.5 months and an incarceration rate of 77.3 percent). However, the changes in the bill should not affect these offenses.

In FY 2015-2016, there were 487 offenders sentenced for trafficking offenses similar to fentanyl (heroin included) between 4 and 14 grams. There were 363 sentenced to prison (mean sentence length of 62.1 months and an incarceration rate of 74.6 percent). There were 126 offenders sentenced for trafficking between 14 and 28 grams, and 102 of these offenders were sentenced to prison (mean sentence length of 94.6 months and an incarceration rate of 81.0 percent). There were 81 offenders sentenced for trafficking between 28 grams and 30 kilograms, and 64 of these offenders were sentenced to prison (mean sentence length of 144.5 months and an incarceration rate of 79.0 percent). No offenders were sentenced for trafficking more than 30 kilograms.

In FY 2015-2016, there were two offenders sentenced for trafficking in phencyclidine between 28 and 200 grams, and both offenders received a prison sentence (mean sentence length of 96.0 months and an incarceration rate of 100 percent). There was one offender sentenced for trafficking between 400 and 800 grams, but that person did not receive a prison sentence.

The only other current trafficking offenses that exist out of s. 893.03(1)(c), F.S., are MDMA and phenethylamines, both of them combined in the DOC's data. Per the DOC, in FY 2015-2016, there were 41 offenders sentenced for trafficking between 10 and 200 grams of these drugs. There were 26 sentenced to prison (mean sentence length of 45.6 months and an incarceration rate of 63.4 percent). There were two offenders sentenced for trafficking between 200 and 400 grams of these drugs, and none of those offenders were sentenced to prison. There was also one offender sentenced for trafficking in over 400 grams of these drugs in FY 2015-2016, and that offender was sentenced to prison

All information in this section of the analysis regarding CJIC estimates of provisions of the bill addressing felony murder by drug distribution, controlled substance scheduling, controlled substance offenses, and departures from mandatory minimum sentences for drug trafficking offenses is from this source.

[64] *Drugs Identified in Deceased Persons* (2015 Annual Report) (September 2016), p. 3, Florida Medical Examiners Commission, *available at* http://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms.aspx (last visited on April 14, 2017).

[65] The abbreviation "adj." means "adjusted." The abbreviation "unadj." means "unadjusted." Sentencing data from the DOC is incomplete, which means that the numbers the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

(sentence length of 84.0 months and incarceration rate of 100 percent). No offenders were sentenced above 30 kilograms.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.887, 782.04, 893.03, 893.13, 893.135, and 921.0022.

This bill creates section 893.015 of the Florida Statutes.

The bill reenacts sections 39.806, 63.089, 95.11, 775.082, 775.0823, 921.16, 948.06, 948.062, 985.265, 1012.315, and 1012.467, Florida Statutes, for the purpose of incorporating amendments made by the bill to various statutes.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 25, 2017:
The committee substitute removes provisions from the bill that authorize departure from drug trafficking mandatory minimum sentencing, authorize mitigation of a Criminal Punishment Code sentence based on a defendant's substance abuse and amenability to treatment, require prison diversion for certain drug possession offenders and nonviolent offenders with substance abuse problems, and reenact statutes that cross-reference statutes amended by the removed provisions.

CS/CS by Judiciary on April 19, 2017:
The committee substitute corrects a technical deficiency by removing the date for which a provision on mitigating circumstances for nonviolent felony offenders will apply to conform to another change to the bill by a prior committee.

CS by Criminal Justice on April 3, 2017:
The committee substitute:

- Provides that a person 18 years of age or older commits felony murder if he or she unlawfully distributes any specified controlled substance, including a specified fentanyl-related substance, and the distribution is proven to be the proximate cause of the death of the user of the substance;

- Includes in Schedule I a class of fentanyl derivatives and five substances that were originally developed for legitimate research but that have now emerged in the illicit drug market;
- Punishes unlawful possession of 10 grams or more of certain Schedule II substances, including certain fentanyl-related substances;
- Adds codeine, an isomer of hydrocodone, to a current provision punishing trafficking in hydrocodone, and adds additional phenethylamines and phencyclidines to current provisions punishing trafficking in phencyclidine and phenethylamine;
- Revises the new offense of trafficking in fentanyl;
- Punishes trafficking in synthetic cannabinoids, and n-benzyl phenethylamines, including mandatory minimum terms of imprisonment and mandatory fines;
- Authorizes a court to depart from a mandatory minimum sentence for drug trafficking after evaluating the defendant's crime, history, character, and chances for successful rehabilitation, if the court finds compelling reasons on the record that the mandatory minimum sentence is not necessary to protect the public;
- Ranks new offenses for trafficking in fentanyl, synthetic cannabinoids, and n-benzyl phenethylamines in the Code offense severity ranking chart;
- Removes a new offense of committing a drug act in a dwelling;
- Removes the ranking of a LSD trafficking offense in the Code offense severity ranking chart;
- Authorizes certain crime laboratory personnel to possess, store, and administer emergency opioid antagonists used to treat opioid overdoses;
- Provides that cross-references throughout the Florida Statutes to the Florida Comprehensive Drug Abuse Prevention and Control Act (ch. 893, F.S.), or any portion thereof, include all subsequent amendments to the act;
- Requires that certain offenders convicted of simple possession of a controlled substance receive a nonstate prison sanction unless such sentence could present a danger to the public;
- Restores a circumstance for mitigating (reducing) a sentence based on substance abuse or addiction and amenability to treatment; and
- Requires diversion through drug court, residential drug treatment, or drug offender probation for certain nonviolent felony offenders who are amenable to substance abuse treatment.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/26/2017	.	
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The Committee on Appropriations (Steube and Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (4) of section 381.887, Florida Statutes, is amended to read:

381.887 Emergency treatment for suspected opioid overdose.—

(4) The following persons ~~Emergency responders, including, but not limited to, law enforcement officers, paramedics, and emergency medical technicians,~~ are authorized to possess, store,

and administer emergency opioid antagonists as clinically indicated:

(a) Emergency responders, including, but not limited to, law enforcement officers, paramedics, and emergency medical technicians.

(b) Crime laboratory personnel for the statewide criminal analysis laboratory system as described in s. 943.32, including, but not limited to, analysts, evidence intake personnel, and their supervisors.

Section 2. Paragraph (a) of subsection (1) of section 782.04, Florida Statutes, is amended to read:

782.04 Murder.—

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

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

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

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

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

f. Kidnapping,

g. Escape,

h. Aggravated child abuse,

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

j. Aircraft piracy,

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

l. Carjacking,

m. Home-invasion robbery,

n. Aggravated stalking,

o. Murder of another human being,

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

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

r. Felony that is an act of terrorism or is in furtherance of an act of terrorism,

s. Human trafficking; or

3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances ~~substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older~~, when such substance or mixture ~~drug~~ is proven to be the proximate cause of the death of the user:

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

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

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

d. Methadone;

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

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

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

h. Sufentanil, as described in s. 893.03(2)(b)29.; or

i. A controlled substance analog, as described in s.

893.0356, of any substance specified in sub-subparagraphs a.-h.,

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

Section 3. Section 893.015, Florida Statutes, is created to read:

893.015 Statutory references.—The purpose of this chapter is to comprehensively address drug abuse prevention and control in this state. To this end, unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 893 or to any section or portion of a section of chapter 893 includes all subsequent amendments to chapter 893 or to the referenced section or portion of a section.

Section 4. Paragraphs (a) and (c) of subsection (1) of section 893.03, Florida Statutes, are amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in

treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetyl-alpha-methylfentanyl.

2. Acetylmethadol.

3. Allylprodine.

4. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).

5. Alphamethadol.

6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

7. Alpha-methylthiofentanyl.

8. Alphameprodine.

9. Benzethidine.

10. Benzylfentanyl.

11. Betacetylmethadol.

12. Beta-hydroxyfentanyl.

13. Beta-hydroxy-3-methylfentanyl.

14. Betameprodine.

15. Betamethadol.

16. Betaprodine.


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17. Clonitazene.
18. Dextromoramide.
19. Diampromide.
20. Diethylthiambutene.
21. Difenoxin.
22. Dimenoxadol.
23. Dimepheptanol.
24. Dimethylthiambutene.
25. Dioxaphetyl butyrate.
26. Dipipanone.
27. Ethylmethylthiambutene.
28. Etonitazene.
29. Etoxeridine.
30. Flunitrazepam.
31. Furethidine.
32. Hydroxypethidine.
33. Ketobemidone.
34. Levomoramide.
35. Levophenacylmorphan.
36. Desmethylprodine (1-Methyl-4-Phenyl-4-Propionoxypiperidine).
37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
38. 3-Methylthiofentanyl.
39. Morpheridine.
40. Noracymethadol.
41. Norlevorphanol.
42. Normethadone.
43. Norpipanone.

44. Para-Fluorofentanyl.
45. Phenadoxone.
46. Phenampromide.
47. Phenomorphan.
48. Phenoperidine.
49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine).
50. Piritramide.
51. Proheptazine.
52. Properidine.
53. Propiram.
54. Racemoramide.
55. Thenylfentanyl.
56. Thiofentanyl.
57. Tilidine.
58. Trimeperidine.
59. Acetylfentanyl.
60. Butyrylfentanyl.
61. Beta-Hydroxythiofentanyl.
62. Fentanyl Derivatives. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a 4-anilidopiperidine structure:
a. With or without substitution at the carbonyl of the aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl,


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methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl, dihydrofuranyl, benzyl moiety, or rings containing heteroatoms sulfur, oxygen, or nitrogen;

b. With or without substitution at the piperidine amino moiety with a phenethyl, benzyl, alkylaryl (including heteroaromatics), alkyltetrazolyl ring, or an alkyl or carbomethoxy group, whether or not further substituted in the ring or group;

c. With or without substitution or addition to the piperdine ring to any extent with one or more methyl, carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester groups;

d. With or without substitution of one or more hydrogen atoms for halogens, or methyl, alkyl, or methoxy groups, in the aromatic ring of the anilide moiety;

e. With or without substitution at the alpha or beta position of the piperidine ring with alkyl, hydroxyl, or methoxy groups;

f. With or without substitution of the benzene ring of the anilide moiety for an aromatic heterocycle; and

g. With or without substitution of the piperidine ring for a pyrrolidine ring, perhydroazepine ring, or azepine ring;

excluding, alfentanil, carfentanil, fentanyl, and sufentanil; including, but not limited to:

(I) Acetyl-alpha-methylfentanyl.

(II) Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).


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(III) Alpha-methylthiofentanyl.
(IV) Benzylfentanyl.
(V) Beta-hydroxyfentanyl.
(VI) Beta-hydroxy-3-methylfentanyl.
(VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
(VIII) 3-Methylthiofentanyl.
(IX) Para-Fluorofentanyl.
(X) Thenylfentanyl or Thienyl fentanyl.
(XI) Thiofentanyl.
(XII) Acetylfentanyl.
(XIII) Butyrylfentanyl.
(XIV) Beta-Hydroxythiofentanyl.
(XV) Lofentanil.
(XVI) Ocfentanil.
(XVII) Ohmfentanyl.
(XVIII) Benzodioxolefentanyl.
(XIX) Furanyl fentanyl.
(XX) Pentanoyl fentanyl.
(XXI) Cyclopentyl fentanyl.
(XXII) Isobutyryl fentanyl.
(XXIII) Remifentanil.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of their salts, isomers, including optical, positional, or geometric isomers, homologues, nitrogen-heterocyclic analogs, esters, ethers, and salts of isomers, homologues, nitrogen-heterocyclic analogs,


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esters, or ethers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation or class description:

1. Alpha-Ethyltryptamine.

2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-oxazoline).

3. Aminorex (2-Amino-5-phenyl-2-oxazoline).

4. DOB (4-Bromo-2,5-dimethoxyamphetamine).

5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).

6. Bufotenine.

7. Cannabis.

8. Cathinone.

9. DET (Diethyltryptamine).

10. 2,5-Dimethoxyamphetamine.

11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine).

12. DMT (Dimethyltryptamine).

13. PCE (N-Ethyl-1-phenylcyclohexylamine)(Ethylamine analog of phencyclidine).

14. JB-318 (N-Ethyl-3-piperidyl benzilate).

15. N-Ethylamphetamine.

16. Fenethylline.

17. 3,4-Methylenedioxy-N-hydroxyamphetamine.

18. Ibogaine.

19. LSD (Lysergic acid diethylamide).

20. Mescaline.

21. Methcathinone.

22. 5-Methoxy-3,4-methylenedioxyamphetamine.

23. PMA (4-Methoxyamphetamine).

24. PMMA (4-Methoxymethamphetamine).


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25. DOM (4-Methyl-2,5-dimethoxyamphetamine).
26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
27. MDA (3,4-Methylenedioxyamphetamine).
28. JB-336 (N-Methyl-3-piperidyl benzilate).
29. N,N-Dimethylamphetamine.
30. Parahexyl.
31. Peyote.
32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine analog of phencyclidine).
33. Psilocybin.
34. Psilocyn.
35. *Salvia divinorum*, except for any drug product approved by the United States Food and Drug Administration which contains *Salvia divinorum* or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
36. Salvinorin A, except for any drug product approved by the United States Food and Drug Administration which contains Salvinorin A or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
37. Xylazine.
38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) (Thiophene analog of phencyclidine).
39. 3,4,5-Trimethoxyamphetamine.
40. Methylone (3,4-Methylenedioxymethcathinone).
41. MDPV (3,4-Methylenedioxypyrovalerone).

42. Methylmethcathinone.
43. Methoxymethcathinone.
44. Fluoromethcathinone.
45. Methylethcathinone.
46. CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol) and its dimethyloctyl (C8) homologue.
47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol].
48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).
49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole).
51. BZP (Benzylpiperazine).
52. Fluorophenylpiperazine.
53. Methylphenylpiperazine.
54. Chlorophenylpiperazine.
55. Methoxyphenylpiperazine.
56. DBZP (1,4-Dibenzylpiperazine).
57. TFMPP (Trifluoromethylphenylpiperazine).
58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).
59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
60. 5-Hydroxy-N-methyltryptamine.
61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
63. Methyltryptamine.
64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
66. Tyramine (4-Hydroxyphenethylamine).

67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
68. DiPT (N,N-Diisopropyltryptamine).
69. DPT (N,N-Dipropyltryptamine).
70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
81. Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone).
82. Ethcathinone.
83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
84. Naphyrone (Naphthylpyrovalerone).
85. Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).
86. 3,4-Methylenedioxy-N,N-diethylcathinone.
87. 3,4-Methylenedioxy-propiophenone.
88. 3,4-Methylenedioxy-alpha-bromopropiophenone.
89. 3,4-Methylenedioxy-propiophenone-2-oxime.
90. 3,4-Methylenedioxy-N-acetylcathinone.
91. 3,4-Methylenedioxy-N-acetylmethcathinone.
92. 3,4-Methylenedioxy-N-acetylethcathinone.
93. Bromomethcathinone.
94. Buphedrone (alpha-Methylamino-butyrophenone).


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95. Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone).

96. Dimethylcathinone.

97. Dimethylmethcathinone.

98. Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone).

99. MDPPP (3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone).

100. MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone).

101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).

102. MPHP (Methyl-alpha-pyrrolidinohexanophenone).

103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine).

104. F-MABP (Fluoromethylaminobutyrophenone).

105. MeO-PBP (Methoxypyrrolidinobutyrophenone).

106. Et-PBP (Ethylpyrrolidinobutyrophenone).

107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).

108. Me-EABP (Methylethylaminobutyrophenone).

109. Etizolam.

110. PPP (Pyrrolidinopropiophenone).

111. PBP (Pyrrolidinobutyrophenone).

112. PVP (Pyrrolidinovalerophenone) or (Pyrrolidinopentiophenone).

113. MPPP (Methyl-alpha-pyrrolidinopropiophenone).

114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).

117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).


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118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).
125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).
131. HU-308 ([(1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol).
132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione).
133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene).
134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide).
135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide).
136. CP 55,940 (2-[3-Hydroxy-6-propanol-cyclohexyl]-5-(2-methyloctan-2-yl)phenol).


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137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).
138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).
139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).
140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).
141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).
142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).
143. Pentedrone (alpha-Methylaminovalerophenone).
144. Fluoroamphetamine.
145. Fluoromethamphetamine.
146. Methoxetamine.
147. Methiopropamine.
148. Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone).
149. APB ((2-Aminopropyl)benzofuran).
150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).
151. UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).
152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).
153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).
154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).
155. AM-2233(1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole).


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156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide).

157. URB-597 ((3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-cyclohexylcarbamate).

158. URB-602 ([1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester).

159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one).

160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).

161. 2C-H (2,5-Dimethoxyphenethylamine).

162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).

163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

165. MDMA (3,4-Methylenedioxymethamphetamine).

166. PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate).

167. Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate).

168. BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate).

169. Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-

yl)-1-(fluoropentyl)indole-3-carboxamide).

174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

175. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

177. FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-carboxylate).

178. Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide).

179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).

181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).

182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9 diol).

185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-tetrahydro-6aH-benzo[c]chromen-1-ol).

186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-


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6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).

187. MAPB ((2-Methylaminopropyl)benzofuran).

188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).

189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).

190. Synthetic Cannabinoids.—Unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found to be in any of the following chemical class descriptions, or homologues, nitrogen-heterocyclic analogs, isomers (including optical, positional, or geometric), esters, ethers, salts, and salts of homologues, nitrogen-heterocyclic analogs, isomers, esters, or ethers, whenever the existence of such homologues, nitrogen-heterocyclic analogs, isomers, esters, ethers, salts, and salts of isomers, esters, or ethers is possible within the specific chemical class or designation. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or the compounds of these structures shall be included under this subparagraph, regardless of their specific numerical designation of atomic positions covered, if it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

a. Tetrahydrocannabinols.—Any tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis*, the synthetic equivalents of the substances contained in the plant or in the resinous extracts of the genus *Cannabis*, or synthetic

substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, including, but not limited to, Delta 9 tetrahydrocannabinols and their optical isomers, Delta 8 tetrahydrocannabinols and their optical isomers, Delta 6a,10a tetrahydrocannabinols and their optical isomers, or any compound containing a tetrahydrobenzo[c]chromene structure with substitution at either or both the 3-position or 9-position, with or without substitution at the 1-position with hydroxyl or alkoxy groups, including, but not limited to:

(I) Tetrahydrocannabinol.

(II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-(2,3-dimethylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(X) Parahexyl.


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b. Naphthoylindoles, Naphthoylindazoles, Naphthoylcarbazoles, Naphthylmethylindoles, Naphthylmethylindazoles, and Naphthylmethylcarbazoles.—Any compound containing a naphthoylindole, naphthoylindazole, naphthoylcarbazole, naphthylmethylindole, naphthylmethylindazole, or naphthylmethylcarbazole structure, with or without substitution on the indole, indazole, or carbazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

(II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-naphthoyl)indole).

(III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

(IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole).

(V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).

(VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).

(VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

(VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole).

(IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole).

(X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).

(XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).

(XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).

(XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).

(XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole).

(XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).

(XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

(XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-naphthoyl)indole).

(XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-naphthoyl)indole).
(XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
(XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).
(XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).
(XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-naphthylmethyl]indole).
(XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-naphthoyl)indole).
(XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-naphthoyl)indole).
(XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole).
(XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
(XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).
(XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
(XXIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).
(XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).
(XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-naphthoyl)indole).
(XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-naphthoyl)indole).
(XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).
(XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-naphthoyl)indole).
(XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-naphthoyl)indole).
(XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).
(XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-

naphthoyl)indazole).

(XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-naphthoyl)indole).

(XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-naphthoyl)indole).

(XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).

(XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-naphthoyl)carbazole).

c. Naphthoylpyrroles.—Any compound containing a naphthoylpyrrole structure, with or without substitution on the pyrrole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).

(II) JWH-031 (1-Hexyl-3-(1-naphthoyl)pyrrole).

(III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-naphthoyl)pyrrole).

(VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-naphthoyl)pyrrole).

(X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-naphthoyl)pyrrole).

d. Naphthylmethylenindenes.—Any compound containing a naphthylmethylenindene structure, with or without substitution

at the 3-position of the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to, JWH-176 (3-Pentyl-1-(naphthylmethylene)indene).

e. Phenylacetylindoles and Phenylacetylindazoles.—Any compound containing a phenylacetylindole or phenylacetylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).

(II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

(III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).

(IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).

(V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).

(VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).

(VII) Cannabipiperidiethanone.

(VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).

f. Cyclohexylphenols.—Any compound containing a cyclohexylphenol structure, with or without substitution at the 5-position of the phenolic ring to any extent, whether or not substituted on the cyclohexyl ring to any extent, including, but not limited to:

(I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol).

(II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8) homologue).

(III) CP-55,940 (2-(3-Hydroxy-6-propanol-cyclohexyl)-5-(2-methyloctan-2-yl)phenol).

g. Benzoylindoles and Benzoylindazoles.—Any compound containing a benzoylindole or benzoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).

(II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).

(III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodo-5-nitrobenzoyl)indole).

(IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-(4-methoxybenzoyl)indole).

(V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole).

(VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).

(VII) RCS-4 C4 homologue (1-Butyl-3-(4-methoxybenzoyl)indole).

(VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-3-(4-methoxybenzoyl)indole).

h. Tetramethylcyclopropanoylindoles and Tetramethylcyclopropanoylindazoles.—Any compound containing a tetramethylcyclopropanoylindole or tetramethylcyclopropanoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the tetramethylcyclopropyl group to any extent, including, but not limited to:

(I) UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indazole).

(IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole carboxamides, and Adamantylindazole carboxamides.—Any compound containing an adamantoyl indole, adamantoyl indazole, adamantyl indole carboxamide, or adamantyl indazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the adamantyl ring to any extent, including, but not limited to:

(I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

(II) Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

(III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide).

(IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-


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adamantoyl)indole).

(V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).

(VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).

(VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-adamantoyl)indole).

j. Quinolinylindolecarboxylates, Quinolinylindazolecarboxylates, Quinolinylindolecarboxamides, and Quinolinylindazolecarboxamides.—Any compound containing a quinolinylindole carboxylate, quinolinylindazole carboxylate, isoquinolinylindole carboxylate, isoquinolinylindazole carboxylate, quinolinylindole carboxamide, quinolinylindazole carboxamide, isoquinolinylindole carboxamide, or isoquinolinylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the quinoline or isoquinoline ring to any extent, including, but not limited to:

(I) PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate).

(II) Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate).

(III) BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate).

(IV) FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) NPB-22 (8-Quinolinyl 1-pentylindazole-3-carboxylate).

(VI) Fluoro NPB-22 (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxylate).

(VII) FUB-NPB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indazole-3-carboxylate).

(VIII) THJ (8-Quinolinyl 1-pentylindazole-3-carboxamide).


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(IX) Fluoro THJ (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxamide).

k. Naphthylindolecarboxylates and Naphthylindazolecarboxylates.—Any compound containing a naphthylindole carboxylate or naphthylindazole carboxylate structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-carboxylate).

(II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-carboxylate).

(III) Fluoro SDB-005 (1-Naphthalenyl 1-(fluoropentyl)indazole-3-carboxylate).

(IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-carboxylate).

l. Naphthylindole carboxamides and Naphthylindazole carboxamides.—Any compound containing a naphthylindole carboxamide or naphthylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).

(II) Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide).

(III) Chloro-NNEI (N-Naphthalen-1-yl 1-(chloropentyl)indole-3-carboxamide).

(IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-carboxamide).

(V) Fluoro MN-18 (N-Naphthalen-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl indazole carboxamides, Alkylcarbonyl indole carboxylates, and Alkylcarbonyl indazole carboxylates.—Any compound containing an alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl, 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an indole carboxamide, indazole carboxamide, indole carboxylate, or indazole carboxylate, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the alkylcarbonyl group to any extent, including, but not limited to:

(I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindole-3-carboxamide).

(II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(XIV) Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).

(XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indole-3-carboxamide).

(XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide).

(XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-

fluorobenzyl)indazole-3-carboxamide).

(XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

n. Cumylindolecarboxamides and Cumylindazolecarboxamides.—Any compound containing a N-(2-phenylpropan-2-yl) indole carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring of the cumyl group to any extent, including, but not limited to:

(I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-carboxamide).

(II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

o. Other Synthetic Cannabinoids.—Any material, compound, mixture, or preparation that contains any quantity of a Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

(I) With or without modification or replacement of a carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage between either two core rings, or linkage between a core ring and group structure, with or without the addition of a carbon or replacement of a carbon;

(II) With or without replacement of a core ring or group structure, whether or not substituted on the ring or group structures to any extent; and

(III) Is a cannabinoid receptor agonist, unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and Drug Administration.


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191. Substituted Cathinones.—Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations:

a. Any compound containing a 2-amino-1-phenyl-1-propanone structure;

b. Any compound containing a 2-amino-1-naphthyl-1-propanone structure; or

c. Any compound containing a 2-amino-1-thiophenyl-1-propanone structure,

whether or not the compound is further modified:

(I) With or without substitution on the ring system to any extent with alkyl, alkylthio, thio, fused alkylenedioxy, alkoxy, haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide substituents;

(II) With or without substitution at the 3-propanone position with an alkyl substituent or removal of the methyl group at the 3-propanone position;

(III) With or without substitution at the 2-amino nitrogen atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or not further substituted in the ring system; or

(IV) With or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:

(A) Methcathinone.


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(B) Ethcathinone.
(C) Methylone (3,4-Methylenedioxymethcathinone).
(D) 2,3-Methylenedioxymethcathinone.
(E) MDPV (3,4-Methylenedioxypyrovalerone).
(F) Methylmethcathinone.
(G) Methoxymethcathinone.
(H) Fluoromethcathinone.
(I) Methylethcathinone.
(J) Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone).
(K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
(L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).
(M) Naphyrone (Naphthylpyrovalerone).
(N) Bromomethcathinone.
(O) Buphedrone (alpha-Methylaminobutyrophenone).
(P) Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone).
(Q) Dimethylcathinone.
(R) Dimethylmethcathinone.
(S) Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone).
(T) Pentedrone (alpha-Methylaminovalerophenone).
(U) MDPPP (3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone).
(V) MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone).
(W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).
(X) PPP (Pyrrolidinopropiophenone).
(Y) PVP (Pyrrolidinovalerophenone) or

(Pyrrolidinopentiophenone).

(Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).

(AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).

(BB) F-MABP (Fluoromethylaminobutyrophenone).

(CC) Me-EABP (Methylethylaminobutyrophenone).

(DD) PBP (Pyrrolidinobutyrophenone).

(EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).

(FF) Et-PBP (Ethylpyrrolidinobutyrophenone).

(GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).

(HH) Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).

(II) 3,4-Methylenedioxy-N,N-diethylcathinone.

(JJ) 3,4-Methylenedioxy-N-acetylcathinone.

(KK) 3,4-Methylenedioxy-N-acetylmethcathinone.

(LL) 3,4-Methylenedioxy-N-acetylethcathinone.

(MM) Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone).

(NN) Methyl-alpha-methylaminohexanophenone.

(OO) N-Ethyl-N-methylcathinone.

(PP) PHP (Pyrrolidinohexanophenone).

(QQ) PV8 (Pyrrolidinoheptanophenone).

(RR) Chloromethcathinone.

(SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.

192. Substituted Phenethylamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence

of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure, without a beta-keto group, and without a benzyl group attached to the amine group, whether or not the compound is further modified with or without substitution on the phenyl ring to any extent with alkyl, alkylthio, nitro, alkoxy, thio, halide, fused alkylenedioxy, fused furan, fused benzofuran, fused dihydrofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha or beta position by any alkyl substituent, with or without substitution at the nitrogen atom, and with or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:

a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).

b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).

c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).

d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).

e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).

f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).

g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).

h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).

i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).

j. 2C-H (2,5-Dimethoxyphenethylamine).

k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).

l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

m. MDMA (3,4-Methylenedioxymethamphetamine).

n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).

o. MDA (3,4-Methylenedioxyamphetamine).


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p. 2,5-Dimethoxyamphetamine.
q. Fluoroamphetamine.
r. Fluoromethamphetamine.
s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
t. DOB (4-Bromo-2,5-dimethoxyamphetamine).
u. DOC (4-Chloro-2,5-dimethoxyamphetamine).
v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).
w. DOI (4-Iodo-2,5-dimethoxyamphetamine).
x. DOM (4-Methyl-2,5-dimethoxyamphetamine).
y. PMA (4-Methoxyamphetamine).
z. N-Ethylamphetamine.
aa. 3,4-Methylenedioxy-N-hydroxyamphetamine.
bb. 5-Methoxy-3,4-methylenedioxyamphetamine.
cc. PMMA (4-Methoxymethamphetamine).
dd. N,N-Dimethylamphetamine.
ee. 3,4,5-Trimethoxyamphetamine.
ff. 4-APB (4-(2-Aminopropyl)benzofuran).
gg. 5-APB (5-(2-Aminopropyl)benzofuran).
hh. 6-APB (6-(2-Aminopropyl)benzofuran).
ii. 7-APB (7-(2-Aminopropyl)benzofuran).
jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).
kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).
ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).
mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).
nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).
oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).
pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).
qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).
rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).


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ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-dihydrobenzofuran),

which does not include phenethylamine, mescaline as described in subparagraph 20., substituted cathinones as described in subparagraph 191., N-Benzyl phenethylamine compounds as described in subparagraph 193., or methamphetamine as described in subparagraph (2)(c)4.

193. N-Benzyl Phenethylamine Compounds.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure without a beta-keto group, with substitution on the nitrogen atom of the amino group with a benzyl substituent, with or without substitution on the phenyl or benzyl ring to any extent with alkyl, alkoxy, thio, alkylthio, halide, fused alkylenedioxy, fused furan, fused benzofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha position by any alkyl substituent, including, but not limited to:

a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

q. 25H-NBOH (2,5-Dimethoxy-[N-(2-


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hydroxybenzyl)]phenethylamine).

r. 25H-NBF (2,5-Dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine),

which does not include substituted cathinones as described in subparagraph 191.

194. Substituted Tryptamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation containing a 2-(1H-indol-3-yl)ethanamine, for example tryptamine, structure with or without mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups, or by inclusion of the amino nitrogen atom in a cyclic structure, whether or not substituted at the alpha position with an alkyl group, whether or not substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, including, but not limited to:

a. Alpha-Ethyltryptamine.

b. Bufotenine.

c. DET (Diethyltryptamine).

d. DMT (Dimethyltryptamine).

e. MET (N-Methyl-N-ethyltryptamine).

f. DALT (N,N-Diallyltryptamine).

g. EiPT (N-Ethyl-N-isopropyltryptamine).

h. MiPT (N-Methyl-N-isopropyltryptamine).

i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).

j. 5-Hydroxy-N-methyltryptamine.
k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
m. Methyltryptamine.
n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
q. DiPT (N,N-Diisopropyltryptamine).
r. DPT (N,N-Dipropyltryptamine).
s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).
v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).
w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).
x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).
y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-isopropyltryptamine).
z. Methyl-alpha-ethyltryptamine.
aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),

which does not include tryptamine, psilocyn as described in subparagraph 34., or psilocybin as described in subparagraph 33.

195. Substituted Phenylcyclohexylamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation containing a phenylcyclohexylamine structure, with or without any substitution on the phenyl ring, any substitution on the cyclohexyl ring, any replacement of the


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phenyl ring with a thiophenyl or benzothiophenyl ring, with or without substitution on the amine with alkyl, dialkyl, or alkoxy substituents, inclusion of the nitrogen in a cyclic structure, or any combination of the above, including, but not limited to:

a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine).

b. PCE (N-Ethyl-1-phenylcyclohexylamine)(Ethylamine analog of phencyclidine).

c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine)(Pyrrolidine analog of phencyclidine).

d. PCPr (Phenylcyclohexylpropylamine).

e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)(Thiophene analog of phencyclidine).

f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).

g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).

h. Methoxetamine.

i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).

j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).

k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).

l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).

m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).

n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).

o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).

p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).

q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).

r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).

196. W-15, 4-chloro-N-[1-(2-phenylethyl)-2-piperidinylidene]-benzenesulfonamide.

197. W-18, 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-

piperidinylidene]-benzenesulfonamide.

198. AH-7921, 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]-benzamide.

199. U47700, trans-3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide.

200. MT-45, 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine, dihydrochloride.

Section 5. Paragraph (c) of subsection (6) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(6)

(c) Except as provided in this chapter, a person may not possess more than 10 grams of any substance named or described in s. 893.03(1)(a), ~~or~~ (1)(b), or (2)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Paragraphs (c), (d), and (k) of subsection (1) of section 893.135, Florida Statutes, are amended, and paragraphs (m) and (n) are added to that subsection, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt,

derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as described in s. 893.03(2)(a)1.g., or any salt~~, derivative, isomer, or salt of an isomer~~ thereof, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person


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shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 200 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.o., or any salt~~, derivative, isomer, or salt of an isomer~~ thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 25 grams or more, but less than 100 grams, such

person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

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

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

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

(IV) Sufentanil, as described in s. 893.03(2)(b)29.;

(V) A fentanyl derivative, as described in s. 893.03(1)(a)62.;

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or

(VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as "trafficking in fentanyl," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and shall be ordered to pay a fine of $50,000.


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(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and shall be ordered to pay a fine of $100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of $500,000.

5.~~4.~~ A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person’s conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6.~~5.~~ A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(d)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine, as described in s. 893.03(2)(b)23., a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture containing phencyclidine, as described in s. 893.03(2)(b)23. ~~893.03(2)(b)~~, a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146.,


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commits a felony of the first degree, which felony shall be known as "trafficking in phencyclidine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly brings into this state 800 grams or more of phencyclidine, as described in s. 893.03(2)(b)23., a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture containing phencyclidine, as described in s. 893.03(2)(b)23. ~~893.03(2)(b)~~, a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the probable result of such importation would be the death of any person commits capital importation of phencyclidine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under


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subparagraph 1.

(k)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of a ~~any of the following substances described in s. 893.03(1)(c)~~:

a. Substance described in s. 893.03(1)(c)4., 5., 10., 11., 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86., 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163., 165., or 187.-189., a substituted cathinone, as described in s. 893.03(1)(c)191., or substituted phenethylamine, as described in s. 893.03(1)(c)192.;

b. Mixture containing any substance described in sub-subparagraph a.; or

c. Salt, isomer, ester, or ether or salt of an isomer, ester, or ether of a substance described in sub-subparagraph a.,

~~a. (MDMA) 3,4-Methylenedioxymethamphetamine;~~

~~b. DOB (4-Bromo-2,5-dimethoxyamphetamine);~~

~~c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~

~~d. 2,5-Dimethoxyamphetamine;~~

~~e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~

~~f. N-ethylamphetamine;~~

~~g. 3,4-Methylenedioxy-N-hydroxyamphetamine;~~

~~h. 5-Methoxy-3,4-methylenedioxyamphetamine;~~

~~i. PMA (4-methoxyamphetamine);~~

~~j. PMMA (4-methoxymethamphetamine);~~

~~k. DOM (4-Methyl-2,5-dimethoxyamphetamine);~~

~~l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~

~~m. MDA (3,4-Methylenedioxyamphetamine);~~

~~n. N,N-dimethylamphetamine;~~
~~o. 3,4,5-Trimethoxyamphetamine;~~
~~p. Methylone (3,4-Methylenedioxymethcathinone);~~
~~q. MDPV (3,4-Methylenedioxypyrovalerone); or~~
~~r. Methylmethcathinone,~~

~~individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r.,~~ commits a felony of the first degree, which felony shall be known as "trafficking in phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 10 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $250,000.

3. A person who knowingly manufactures or brings into this state 30 kilograms or more of a substance described in sub-subparagraph 1.a., a mixture described in sub-subparagraph 1.b., or a salt, isomer, ester, or ether or a salt of an isomer, ester, or ether described in sub-subparagraph 1.c., ~~any of the following substances described in s. 893.03(1)(c):~~


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~~a. MDMA (3,4-Methylenedioxymethamphetamine);~~
~~b. DOB (4-Bromo-2,5-dimethoxyamphetamine);~~
~~c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~
~~d. 2,5-Dimethoxyamphetamine;~~
~~e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~
~~f. N-ethylamphetamine;~~
~~g. N-Hydroxy-3,4-methylenedioxyamphetamine;~~
~~h. 5-Methoxy-3,4-methylenedioxyamphetamine;~~
~~i. PMA (4-methoxyamphetamine);~~
~~j. PMMA (4-methoxymethamphetamine);~~
~~k. DOM (4-Methyl-2,5-dimethoxyamphetamine);~~
~~l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~
~~m. MDA (3,4-Methylenedioxyamphetamine);~~
~~n. N,N-dimethylamphetamine;~~
~~o. 3,4,5-Trimethoxyamphetamine;~~
~~p. Methylone (3,4-Methylenedioxymethcathinone);~~
~~q. MDPV (3,4-Methylenedioxypyrovalerone); or~~
~~r. Methylmethcathinone,~~

~~individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r.,~~ and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of phenethylamines, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine ~~provided~~ under subparagraph 2. ~~1.~~

(m)1. A person who knowingly sells, purchases,


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manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 280 grams or more of a:

a. Substance described in s. 893.03(1)(c)30., 46.-50., 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic cannabinoid, as described in s. 893.03(1)(c)190.; or

b. Mixture containing any substance described in sub-subparagraph a.,

commits a felony of the first degree, which felony shall be known as "trafficking in synthetic cannabinoids," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 280 grams or more, but less than 500 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 500 grams or more, but less than 1 kilogram, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 1 kilogram or more, but less than 30 kilograms such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of $200,000.

d. Is 30 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and the defendant shall be ordered to pay a fine of $750,000.

(n)1. A person who knowingly sells, purchases,

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manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of:

a. A substance described in s. 893.03(1)(c)164., 174., or 175., a n-benzyl phenethylamine compound, as described in s. 893.03(1)(c)193.; or

b. A mixture containing any substance described in sub-subparagraph a.,

commits a felony of the first degree, which felony shall be known as "trafficking in n-benzyl phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 14 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 100 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of $500,000.

3. A person who knowingly manufactures or brings into this state 400 grams or more of a substance described in sub-subparagraph 1.a. or a mixture described in sub-subparagraph 1.b., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital

manufacture or importation of a n-benzyl phenethylamine compound, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine under subparagraph 2.

Section 7. For the purpose of incorporating the amendments made by this act to sections 893.03, 893.13, and 893.135, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), and (e) subsection (3) of section 921.0022, Florida Statutes, are reenacted; and paragraphs (g), (h), and (i) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than $300 but

		less than $20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
322.212(5)(a)	3rd	False application for driver license or identification card.

414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than $200.
443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than $300.
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than $50.
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).

812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s.

		893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud $150 or more.
832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks $150 or more or obtaining property in return for worthless check $150 or more.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.

849.23	3rd	Gambling-related machines; "common offender" as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431	3rd	Possession of 11 or fewer

(1)(e)3.		marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.

806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $300, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
817.234(1)(a)2.	3rd	False statement in support of insurance claim.

817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01	3rd	Forgery.

831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs

		other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.

	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
1621			
	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
1622			
	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
1623			
	327.35(2)(b)	3rd	Felony BUI.
1624			
	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
1625			
	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
1626			
	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
1627			
	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be

			destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
1628			
	379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
1629			
	400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
1630			
	400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
1631			
	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
1632			
	501.001(2)(b)	2nd	Tampers with a consumer product or the container using

		materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than

			structure or conveyance armed with firearm or dangerous weapon.
1641			
	812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
1642			
	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
1643			
	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
1644			
	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
1645			
	817.233	3rd	Burning to defraud insurer.
1646			
	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
1647			
	817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
1648			
	817.236	3rd	Filing a false motor vehicle

			insurance application.
1649			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
1650			
	817.413(2)	3rd	Sale of used goods as new.
1651			
	817.505(4)	3rd	Patient brokering.
1652			
	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
1653			
	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
1654			
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
1655			
	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
1656			
	843.19	3rd	Injure, disable, or kill police

			dog or horse.
1657			
	860.15(3)	3rd	Overcharging for repairs and parts.
1658			
	870.01(2)	3rd	Riot; inciting or encouraging.
1659			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
1660			
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
1661			
	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.

1662			
	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
1663			
	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
1664			
	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
1665			
	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
1666			
	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
1667			
	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
1668			
	893.13(8)(a)1.	3rd	Knowingly assist a patient,

			other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner’s practice.
1669			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner’s practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
1670			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
1671			
	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
1672			
	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.

944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or

			transaction statements.
1682			
	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
1683			
	517.07(1)	3rd	Failure to register securities.
1684			
	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
1685			
	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
1686			
	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
1687			
	784.075	3rd	Battery on detention or commitment facility staff.
1688			
	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
1689			
	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
1690			
	784.081(3)	3rd	Battery on specified official

		or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.

790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.

812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official

			proceedings.
1714			
	837.021(1)	3rd	Make contradictory statements in official proceedings.
1715			
	838.022	3rd	Official misconduct.
1716			
	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
1717			
	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
1718			
	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
1719			
	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
1720			
	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
1721			
	847.0135(5)(c)	3rd	Lewd or lascivious exhibition

			using computer; offender less than 18 years.
	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
	914.14(2)	3rd	Witnesses accepting bribes.
	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
	918.12	3rd	Tampering with jurors.
	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply,

			aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
1739			
	379.367(4)	3rd	Willful molestation of a commercial harvester’s spiny lobster trap, line, or buoy.
1740			
	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
1741			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
1742			
	440.10(1)(g)	2nd	Failure to obtain workers’ compensation coverage.
1743			
	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers’ compensation claims.
1744			

	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
1745			
	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
1746			
	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
1747			
	790.01(2)	3rd	Carrying a concealed firearm.
1748			
	790.162	2nd	Threat to throw or discharge destructive device.
1749			
	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
1750			
	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
1751			
	790.23	2nd	Felons in possession of firearms, ammunition, or

		electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.

812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.

	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
1766			
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
1767			
	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
1768			
	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1769			
	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
1770			
	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.

			drugs).
1778			
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
1779			
	893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
1780			
	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within

			1,000 feet of property used for religious services or a specified business site.
	893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
	893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily

		injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.

456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.


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466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(7)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.


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560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or

		conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using

		deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code

			inspector.
1834			
	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
1835			
	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
1836			
	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
1837			
	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
1838			
	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
1839			
	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
1840			
	790.166(3)	2nd	Possessing, selling, using, or

			attempting to use a hoax weapon of mass destruction.
1841			
	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
1842			
	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
1843			
	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
1844			
	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
1845			
	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
1846			
	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of

			age; offender younger than 18 years of age.
1847			
	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
1848			
	800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
1849			
	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
1850			
	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
1851			
	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
1852			
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.

810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the

			theft of property and traffics in stolen property.
1860			
	812.131(2)(a)	2nd	Robbery by sudden snatching.
1861			
	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
1862			
	817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
1863			
	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
1864			
	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1865			
	817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
1866			
	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.

817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $10,000 or more, but less than $50,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.

838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.

	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
1885			
	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
1886			
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
1887			
	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or

			a specified business site.
1888			
	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
1889			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
1890			
	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
1891			
	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
1892			
	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
1893			
	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
1894			
	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.


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893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
893.135 (1)(c)4.b.(I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
893.135(1)(d)1.a. ~~893.135(1)(d)1.~~	1st	Trafficking in phencyclidine, ~~more than~~ 28 grams or more, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, ~~more than~~ 200 grams or more, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, ~~more than~~ 14 grams or more, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.

893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.135(1)(m)2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
893.135(1)(m)2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1 kilogram.
893.135(1)(n)2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.

896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false

		registration information.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.

	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
1932			
	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
1933			
	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
1934			
	777.03(2)(a)	1st	Accessory after the fact, capital felony.
1935			
	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or

		unlawfully discharging bomb.
782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from

			outside Florida to within the state.
1943			
	787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
1944			
	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
1945			
	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
1946			
	794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
1947			
	794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender

			younger than 18 years; offender does not use physical force likely to cause injury.
1948			
	794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
1949			
	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
1950			
	800.04(4)(b)	2nd	Lewd or lascivious battery.
1951			
	800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
1952			
	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
1953			
	810.02(2)(a)	1st,PBL	Burglary with assault or battery.

1954			
	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
1955			
	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
1956			
	812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
1957			
	812.13(2)(b)	1st	Robbery with a weapon.
1958			
	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
1959			
	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
1960			
	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
1961			
	817.535(4)(a)1.	2nd	Filing false lien or other

			unauthorized document; defendant is incarcerated or under supervision.
1962			
	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
1963			
	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
1964			
	817.611(2)(c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
1965			
	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
1966			
	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
1967			
	825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $50,000 or more.

1968			
	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
1969			
	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
1970			
	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
1971			
	860.16	1st	Aircraft piracy.
1972			
	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
1973			
	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
1974			
	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
893.135 (1)(c)4.b.(II)	1st	Trafficking in fentanyl, 14 grams or more, less than 28 grams.
893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, ~~more than~~ 200 grams or more, less than 400 grams.

893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, ~~more than~~ 5 kilograms or more, less than 25 kilograms.
893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, ~~more than~~ 28 grams or more, less than 200 grams.
893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
893.135(1)(m)2.c.	1st	Trafficking in synthetic cannabinoids, 1 kilogram or more, less than 30 kilograms.

893.135(1)(n)2.b.	1st	Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.
893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration

			requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35 (3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
499.0051(8)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.

	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
2006			
	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
2007			
	775.0844	1st	Aggravated white collar crime.
2008			
	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
2009			
	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
2010			
	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
2011			
	782.07(2)	1st	Aggravated manslaughter of an

			elderly person or disabled adult.
2012			
	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
2013			
	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
2014			
	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
2015			
	787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
2016			
	787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
2017			
	787.06(3)(d)	1st	Human trafficking using

		coercion for commercial sexual activity of an unauthorized adult alien.
787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
790.161	1st	Attempted capital destructive device offense.
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)(a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger

			than 18 years; offender 18 years or older.
2024			
	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
2025			
	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
2026			
	794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
2027			
	794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
2028			
	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
2029			
	800.04(5)(b)	Life	Lewd or lascivious molestation;

			victim less than 12 years; offender 18 years or older.
2030			
	812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
2031			
	812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
2032			
	812.135(2)(b)	1st	Home-invasion robbery with weapon.
2033			
	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
2034			
	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
2035			
	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.

817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
827.03(2)(a)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
893.135	1st	Attempted capital trafficking offense.

2043	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
2044	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
2045	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
2046	893.135 (1)(c)2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.
2047	893.135 (1)(c)3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
2048	893.135 (1)(c)4.b.(III)	1st	Trafficking in fentanyl, 28 grams or more.
2049	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, ~~more than~~ 400 grams or more.
2050	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, ~~more than~~ 25 kilograms or more.
	893.135	1st	Trafficking in amphetamine,

	(1)(f)1.c.		~~more than~~ 200 grams or more.
2051			
	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
2052			
	893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
2053			
	893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
2054			
	893.135 (1)(m)2.d.	1st	Trafficking in synthetic cannabinoids, 30 kilograms or more.
2055			
	893.135(1)(n)2.c.	1st	Trafficking in n-benzyl phenethylamines, 200 grams or more.
2056			
	896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
2057			
	896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

Section 8. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 39.806, Florida Statutes, is reenacted to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(d) When the parent of a child is incarcerated and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a significant portion of the child's minority. When determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that

of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child. When determining harm, the court shall consider the following factors:

a. The age of the child.

b. The relationship between the child and the parent.

c. The nature of the parent's current and past provision for the child's developmental, cognitive, psychological, and physical needs.

d. The parent's history of criminal behavior, which may include the frequency of incarceration and the unavailability of the parent to the child due to incarceration.

e. Any other factor the court deems relevant.

Section 9. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 63.089, Florida Statutes, is reenacted to read:

63.089 Proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.—

(4) FINDING OF ABANDONMENT.—A finding of abandonment resulting in a termination of parental rights must be based upon clear and convincing evidence that a parent or person having legal custody has abandoned the child in accordance with the definition contained in s. 63.032. A finding of abandonment may


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also be based upon emotional abuse or a refusal to provide reasonable financial support, when able, to a birth mother during her pregnancy or on whether the person alleged to have abandoned the child, while being able, failed to establish contact with the child or accept responsibility for the child's welfare.

(b) The child has been abandoned when the parent of a child is incarcerated on or after October 1, 2001, in a federal, state, or county correctional institution and:

1. The period of time for which the parent has been or is expected to be incarcerated will constitute a significant portion of the child's minority. In determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by a court of competent jurisdiction to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, convicted of child abuse as defined in s. 827.03, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of a substantially similar offense in another jurisdiction. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other

jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, termination of the parental rights of the incarcerated parent is in the best interests of the child.

Section 10. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, subsection (10) of section 95.11, Florida Statutes, is reenacted to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph (4)(d), an action for wrongful death seeking damages authorized under s. 768.21 brought against a natural person for an intentional tort resulting in death from acts described in s. 782.04 or s. 782.07 may be commenced at any time. This subsection shall not be construed to require an arrest, the filing of formal criminal charges, or a conviction for a violation of s. 782.04 or s. 782.07 as a condition for filing a civil action.

Section 11. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, paragraph (b) of subsection (1) and paragraphs (a), (b), and (c) of subsection (3) of section

775.082, Florida Statutes, are reenacted to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)

(b)1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed before October 1, 1983, by a term of imprisonment for life or for a term of at least 30 years.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4.a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of at least 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s.

800.04(5)(b), by a term of imprisonment for life.

5. Notwithstanding subparagraphs 1.-4., a person who is convicted under s. 782.04 of an offense that was reclassified as a life felony which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

6. For a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g), by a term of imprisonment for life.

(b)1. For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically

provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

2. Notwithstanding subparagraph 1., a person convicted under s. 782.04 of a first degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life, which was committed before the person attained 18 years of age may be punished by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(c) Notwithstanding paragraphs (a) and (b), a person convicted of an offense that is not included in s. 782.04 but that is an offense that is a life felony or is punishable by a

term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(d).

Section 12. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, subsections (1) and (2) of section 775.0823, Florida Statutes, are reenacted to read:

775.0823 Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.—The Legislature does hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to s. 27.01 or assistant state attorney appointed under s. 27.181; or against any justice or judge of a court described in Art. V of the State Constitution, which offense arises out of or in the scope of the officer’s duty as a law enforcement or correctional officer, the state attorney’s or

assistant state attorney's duty as a prosecutor or investigator, or the justice's or judge's duty as a judicial officer, as follows:

(1) For murder in the first degree as described in s. 782.04(1), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release.

(2) For attempted murder in the first degree as described in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

Section 13. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, subsection (1) of section 921.16, Florida Statutes, is reenacted to read:

921.16 When sentences to be concurrent and when consecutive.—

(1) A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently. Any sentence for


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sexual battery as defined in chapter 794 or murder as defined in s. 782.04 must be imposed consecutively to any other sentence for sexual battery or murder which arose out of a separate criminal episode or transaction.

Section 14. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (c) of subsection (8) of section 948.06, Florida Statutes, is reenacted to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(8)

(c) For purposes of this section, the term "qualifying offense" means any of the following:

1. Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), or luring or enticing a child under s. 787.025(2)(b) or (c).

2. Murder or attempted murder under s. 782.04, attempted felony murder under s. 782.051, or manslaughter under s. 782.07.

3. Aggravated battery or attempted aggravated battery under s. 784.045.

4. Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c).

5. Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious conduct under s. 800.04(6)(b), lewd or lascivious exhibition under s. 800.04(7)(b), or lewd or lascivious exhibition on


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computer under s. 847.0135(5)(b).

6. Robbery or attempted robbery under s. 812.13, carjacking or attempted carjacking under s. 812.133, or home invasion robbery or attempted home invasion robbery under s. 812.135.

7. Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025.

8. Sexual performance by a child or attempted sexual performance by a child under s. 827.071.

9. Computer pornography under s. 847.0135(2) or (3), transmission of child pornography under s. 847.0137, or selling or buying of minors under s. 847.0145.

10. Poisoning food or water under s. 859.01.

11. Abuse of a dead human body under s. 872.06.

12. Any burglary offense or attempted burglary offense that is either a first degree felony or second degree felony under s. 810.02(2) or (3).

13. Arson or attempted arson under s. 806.01(1).

14. Aggravated assault under s. 784.021.

15. Aggravated stalking under s. 784.048(3), (4), (5), or (7).

16. Aircraft piracy under s. 860.16.

17. Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4).

18. Treason under s. 876.32.

19. Any offense committed in another jurisdiction which would be an offense listed in this paragraph if that offense had been committed in this state.

Section 15. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 948.062, Florida Statutes, is reenacted to read:

948.062 Reviewing and reporting serious offenses committed by offenders placed on probation or community control.—

(1) The department shall review the circumstances related to an offender placed on probation or community control who has been arrested while on supervision for the following offenses:

(a) Any murder as provided in s. 782.04;

Section 16. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 985.265, Florida Statutes, is reenacted to read:

985.265 Detention transfer and release; education; adult jails.—

(3)

(b) When a juvenile is released from secure detention or transferred to nonsecure detention, detention staff shall immediately notify the appropriate law enforcement agency, school personnel, and victim if the juvenile is charged with committing any of the following offenses or attempting to commit any of the following offenses:

1. Murder, under s. 782.04;

2. Sexual battery, under chapter 794;

3. Stalking, under s. 784.048; or

4. Domestic violence, as defined in s. 741.28.

Section 17. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a

reference thereto, paragraph (d) of subsection (1) of section 1012.315, Florida Statutes, is reenacted to read:

1012.315 Disqualification from employment.—A person is ineligible for educator certification, and instructional personnel and school administrators, as defined in s. 1012.01, are ineligible for employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students under s. 1002.39 or s. 1002.395, if the person, instructional personnel, or school administrator has been convicted of:

(1) Any felony offense prohibited under any of the following statutes:

(d) Section 782.04, relating to murder.

Section 18. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (g) of subsection (2) of section 1012.467, Florida Statutes, is reenacted to read:

1012.467 Noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.—

(2)

(g) A noninstructional contractor for whom a criminal history check is required under this section may not have been convicted of any of the following offenses designated in the Florida Statutes, any similar offense in another jurisdiction, or any similar offense committed in this state which has been redesignated from a former provision of the Florida Statutes to one of the following offenses:


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1. Any offense listed in s. 943.0435(1)(h)1., relating to the registration of an individual as a sexual offender.

2. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and the reporting of such sexual misconduct.

3. Section 394.4593, relating to sexual misconduct with certain mental health patients and the reporting of such sexual misconduct.

4. Section 775.30, relating to terrorism.

5. Section 782.04, relating to murder.

6. Section 787.01, relating to kidnapping.

7. Any offense under chapter 800, relating to lewdness and indecent exposure.

8. Section 826.04, relating to incest.

9. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

Section 19. This act shall take effect October 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to controlled substances; amending s. 381.887, F.S.; providing that certain emergency responders and crime laboratory personnel may possess, store, and administer emergency opioid antagonists; amending s. 782.04, F.S.; providing that unlawful distribution of specified controlled substances and

analogs or mixtures thereof by an adult which proximately cause a death is murder; providing criminal penalties; creating s. 893.015, F.S.; specifying purpose relating to drug abuse prevention and control; providing that a reference to ch. 893, F.S., or to any section or portion thereof, includes all subsequent amendments; amending s. 893.03, F.S.; adding certain synthetic opioid substitute compounds to the list of Schedule I controlled substances; amending s. 893.13, F.S.; prohibiting possession of more than 10 grams of specified substances; providing criminal penalties; amending s. 893.135, F.S.; revising the substances that constitute the offenses of trafficking and capital trafficking in, and capital importation of, hydrocodone and oxycodone; creating the offense of trafficking in fentanyl; providing penalties and specifying minimum terms of imprisonment and fines based on the quantity involved in the offense; revising the substances that constitute the offenses of trafficking in phencyclidine and capital importation of phencyclidine; revising the substances that constitute trafficking in phenethylamines and capital manufacture or importation of phenethylamines; creating the offense of trafficking in synthetic cannabinoids; providing penalties and specifying minimum terms of imprisonment and fines based on the quantity involved in the offense; creating the offenses of trafficking in n-benzyl phenethylamines and capital manufacture or importation of a n-benzyl


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phenethylamine compound; providing penalties and specifying minimum terms of imprisonment and fines based on the quantity involved in the offense; reenacting and amending s. 921.0022, F.S.; ranking offenses on the offense severity ranking chart of the Criminal Punishment Code; incorporating the amendments made by the act in cross-references to amended provisions; reenacting ss. 39.806(1)(d), 63.089(4)(b), 95.11(10), 775.082(1)(b) and (3)(a), (b), and (c), 775.0823(1) and (2), 921.16(1), 948.06(8)(c), 948.062(1)(a), 985.265(3)(b), 1012.315(1)(d), and 1012.467(2)(g), relating to grounds for termination of parental rights, proceeding to terminate parental rights pending adoption, limitations other than for the recovery of real property, penalties, violent offenses committed against specified officials, when sentences to be concurrent and when consecutive, violation of probation or community control, reviewing and reporting serious offenses committed by offenders placed on probation or community control, detention transfer and release, disqualification from employment, and noninstructional contractors who are permitted access to school grounds when students are present, respectively, to incorporate the amendments made by the act in cross-references to amended provisions; providing an effective date.

145864

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Steube, Benacquisto, and Latvala) recommended the following:

Senate Substitute for Amendment (531844) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (4) of section 381.887, Florida Statutes, is amended to read:

381.887 Emergency treatment for suspected opioid overdose.—

(4) The following persons ~~Emergency responders, including, but not limited to, law enforcement officers, paramedics, and~~

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~~emergency medical technicians,~~ are authorized to possess, store, and administer emergency opioid antagonists as clinically indicated:

(a) Emergency responders, including, but not limited to, law enforcement officers, paramedics, and emergency medical technicians.

(b) Crime laboratory personnel for the statewide criminal analysis laboratory system as described in s. 943.32, including, but not limited to, analysts, evidence intake personnel, and their supervisors.

Section 2. Paragraph (a) of subsection (1) of section 782.04, Florida Statutes, is amended to read:

782.04 Murder.—

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

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

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

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

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

f. Kidnapping,

g. Escape,

h. Aggravated child abuse,

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

j. Aircraft piracy,

k. Unlawful throwing, placing, or discharging of a

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destructive device or bomb,

l. Carjacking,

m. Home-invasion robbery,

n. Aggravated stalking,

o. Murder of another human being,

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

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

r. Felony that is an act of terrorism or is in furtherance of an act of terrorism,

s. Human trafficking; or

3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances ~~substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older~~, when such substance or mixture ~~drug~~ is proven to be the proximate cause of the death of the user:

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

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

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

d. Methadone;

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

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

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

h. Sufentanil, as described in s. 893.03(2)(b)29.; or

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

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

Section 3. Section 893.015, Florida Statutes, is created to read:

893.015 Statutory references.—The purpose of this chapter is to comprehensively address drug abuse prevention and control in this state. To this end, unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 893 or to any section or portion of a section of chapter 893 includes all subsequent amendments to chapter 893 or to the referenced section or portion of a section.

Section 4. Paragraphs (a) and (c) of subsection (1) of section 893.03, Florida Statutes, are amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high

potential for abuse and has no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetyl-alpha-methylfentanyl.

2. Acetylmethadol.

3. Allylprodine.

4. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).

5. Alphamethadol.

6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

7. Alpha-methylthiofentanyl.

8. Alphameprodine.

9. Benzethidine.

10. Benzylfentanyl.

11. Betacetylmethadol.

12. Beta-hydroxyfentanyl.

13. Beta-hydroxy-3-methylfentanyl.

14. Betameprodine.

15. Betamethadol.

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16. Betaprodine.
17. Clonitazene.
18. Dextromoramide.
19. Diampromide.
20. Diethylthiambutene.
21. Difenoxin.
22. Dimenoxadol.
23. Dimepheptanol.
24. Dimethylthiambutene.
25. Dioxaphetyl butyrate.
26. Dipipanone.
27. Ethylmethylthiambutene.
28. Etonitazene.
29. Etoxeridine.
30. Flunitrazepam.
31. Furethidine.
32. Hydroxypethidine.
33. Ketobemidone.
34. Levomoramide.
35. Levophenacylmorphan.
36. Desmethylprodine (1-Methyl-4-Phenyl-4-Propionoxypiperidine).
37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
38. 3-Methylthiofentanyl.
39. Morpheridine.
40. Noracymethadol.
41. Norlevorphanol.
42. Normethadone.


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43. Norpipanone.
44. Para-Fluorofentanyl.
45. Phenadoxone.
46. Phenampromide.
47. Phenomorphan.
48. Phenoperidine.
49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine).
50. Piritramide.
51. Proheptazine.
52. Properidine.
53. Propiram.
54. Racemoramide.
55. Thenylfentanyl.
56. Thiofentanyl.
57. Tilidine.
58. Trimeperidine.
59. Acetylfentanyl.
60. Butyrylfentanyl.
61. Beta-Hydroxythiofentanyl.
62. Fentanyl Derivatives. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a 4-anilidopiperidine structure:
a. With or without substitution at the carbonyl of the

aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl, methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl, dihydrofuranyl, benzyl moiety, or rings containing heteroatoms sulfur, oxygen, or nitrogen;

b. With or without substitution at the piperidine amino moiety with a phenethyl, benzyl, alkylaryl (including heteroaromatics), alkyltetrazolyl ring, or an alkyl or carbomethoxy group, whether or not further substituted in the ring or group;

c. With or without substitution or addition to the piperdine ring to any extent with one or more methyl, carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester groups;

d. With or without substitution of one or more hydrogen atoms for halogens, or methyl, alkyl, or methoxy groups, in the aromatic ring of the anilide moiety;

e. With or without substitution at the alpha or beta position of the piperidine ring with alkyl, hydroxyl, or methoxy groups;

f. With or without substitution of the benzene ring of the anilide moiety for an aromatic heterocycle; and

g. With or without substitution of the piperidine ring for a pyrrolidine ring, perhydroazepine ring, or azepine ring;

excluding, alfentanil, carfentanil, fentanyl, and sufentanil; including, but not limited to:

(I) Acetyl-alpha-methylfentanyl.

(II) Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-

(N-propanilido) piperidine).

(III) Alpha-methylthiofentanyl.

(IV) Benzylfentanyl.

(V) Beta-hydroxyfentanyl.

(VI) Beta-hydroxy-3-methylfentanyl.

(VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).

(VIII) 3-Methylthiofentanyl.

(IX) Para-Fluorofentanyl.

(X) Thenylfentanyl or Thienyl fentanyl.

(XI) Thiofentanyl.

(XII) Acetylfentanyl.

(XIII) Butyrylfentanyl.

(XIV) Beta-Hydroxythiofentanyl.

(XV) Lofentanil.

(XVI) Ocfentanil.

(XVII) Ohmfentanyl.

(XVIII) Benzodioxolefentanyl.

(XIX) Furanyl fentanyl.

(XX) Pentanoyl fentanyl.

(XXI) Cyclopentyl fentanyl.

(XXII) Isobutyryl fentanyl.

(XXIII) Remifentanil.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of their salts, isomers, including optical, positional, or geometric isomers, homologues, nitrogen-heterocyclic analogs, esters, ethers, and

salts of isomers, homologues, nitrogen-heterocyclic analogs, esters, or ethers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation or class description:

1. Alpha-Ethyltryptamine.

2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-oxazoline).

3. Aminorex (2-Amino-5-phenyl-2-oxazoline).

4. DOB (4-Bromo-2,5-dimethoxyamphetamine).

5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).

6. Bufotenine.

7. Cannabis.

8. Cathinone.

9. DET (Diethyltryptamine).

10. 2,5-Dimethoxyamphetamine.

11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine).

12. DMT (Dimethyltryptamine).

13. PCE (N-Ethyl-1-phenylcyclohexylamine)(Ethylamine analog of phencyclidine).

14. JB-318 (N-Ethyl-3-piperidyl benzilate).

15. N-Ethylamphetamine.

16. Fenethylline.

17. 3,4-Methylenedioxy-N-hydroxyamphetamine.

18. Ibogaine.

19. LSD (Lysergic acid diethylamide).

20. Mescaline.

21. Methcathinone.

22. 5-Methoxy-3,4-methylenedioxyamphetamine.

23. PMA (4-Methoxyamphetamine).

24. PMMA (4-Methoxymethamphetamine).
25. DOM (4-Methyl-2,5-dimethoxyamphetamine).
26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
27. MDA (3,4-Methylenedioxyamphetamine).
28. JB-336 (N-Methyl-3-piperidyl benzilate).
29. N,N-Dimethylamphetamine.
30. Parahexyl.
31. Peyote.
32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine analog of phencyclidine).
33. Psilocybin.
34. Psilocyn.
35. *Salvia divinorum*, except for any drug product approved by the United States Food and Drug Administration which contains *Salvia divinorum* or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
36. Salvinorin A, except for any drug product approved by the United States Food and Drug Administration which contains Salvinorin A or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
37. Xylazine.
38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) (Thiophene analog of phencyclidine).
39. 3,4,5-Trimethoxyamphetamine.
40. Methylone (3,4-Methylenedioxymethcathinone).


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41. MDPV (3,4-Methylenedioxypyrovalerone).
42. Methylmethcathinone.
43. Methoxymethcathinone.
44. Fluoromethcathinone.
45. Methylethcathinone.
46. CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol) and its dimethyloctyl (C8) homologue.
47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol].
48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).
49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole).
51. BZP (Benzylpiperazine).
52. Fluorophenylpiperazine.
53. Methylphenylpiperazine.
54. Chlorophenylpiperazine.
55. Methoxyphenylpiperazine.
56. DBZP (1,4-Dibenzylpiperazine).
57. TFMPP (Trifluoromethylphenylpiperazine).
58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).
59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
60. 5-Hydroxy-N-methyltryptamine.
61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
63. Methyltryptamine.
64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).


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66. Tyramine (4-Hydroxyphenethylamine).
67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
68. DiPT (N,N-Diisopropyltryptamine).
69. DPT (N,N-Dipropyltryptamine).
70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
81. Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone).
82. Ethcathinone.
83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
84. Naphyrone (Naphthylpyrovalerone).
85. Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).
86. 3,4-Methylenedioxy-N,N-diethylcathinone.
87. 3,4-Methylenedioxy-propiophenone.
88. 3,4-Methylenedioxy-alpha-bromopropiophenone.
89. 3,4-Methylenedioxy-propiophenone-2-oxime.
90. 3,4-Methylenedioxy-N-acetylcathinone.
91. 3,4-Methylenedioxy-N-acetylmethcathinone.
92. 3,4-Methylenedioxy-N-acetylethcathinone.
93. Bromomethcathinone.

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94. Buphedrone (alpha-Methylamino-butyrophenone).

95. Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone).

96. Dimethylcathinone.

97. Dimethylmethcathinone.

98. Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone).

99. MDPPP (3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone).

100. MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone).

101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).

102. MPHP (Methyl-alpha-pyrrolidinohexanophenone).

103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine).

104. F-MABP (Fluoromethylaminobutyrophenone).

105. MeO-PBP (Methoxypyrrolidinobutyrophenone).

106. Et-PBP (Ethylpyrrolidinobutyrophenone).

107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).

108. Me-EABP (Methylethylaminobutyrophenone).

109. Etizolam.

110. PPP (Pyrrolidinopropiophenone).

111. PBP (Pyrrolidinobutyrophenone).

112. PVP (Pyrrolidinovalerophenone) or (Pyrrolidinopentiophenone).

113. MPPP (Methyl-alpha-pyrrolidinopropiophenone).

114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).


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117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).
118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).
125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).
131. HU-308 ([(1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol).
132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione).
133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene).
134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide).
135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide).
136. CP 55,940 (2-[3-Hydroxy-6-propanol-cyclohexyl]-5-(2-


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methyloctan-2-yl)phenol).

137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).

138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).

139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).

140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).

141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

143. Pentedrone (alpha-Methylaminovalerophenone).

144. Fluoroamphetamine.

145. Fluoromethamphetamine.

146. Methoxetamine.

147. Methiopropamine.

148. Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone).

149. APB ((2-Aminopropyl)benzofuran).

150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).

151. UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

155. AM-2233(1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-


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iodobenzoyl)indole).

156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide).

157. URB-597 ((3′-(Aminocarbonyl)[1,1′-biphenyl]-3-yl)-cyclohexylcarbamate).

158. URB-602 ([1,1′-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester).

159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one).

160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).

161. 2C-H (2,5-Dimethoxyphenethylamine).

162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).

163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

165. MDMA (3,4-Methylenedioxymethamphetamine).

166. PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate).

167. Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate).

168. BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate).

169. Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).


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173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

175. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

177. FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-carboxylate).

178. Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide).

179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).

181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).

182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9 diol).

185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-tetrahydro-6aH-benzo[c]chromen-1-ol).

186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).

187. MAPB ((2-Methylaminopropyl)benzofuran).

188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).

189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).

190. Synthetic Cannabinoids.—Unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found to be in any of the following chemical class descriptions, or homologues, nitrogen-heterocyclic analogs, isomers (including optical, positional, or geometric), esters, ethers, salts, and salts of homologues, nitrogen-heterocyclic analogs, isomers, esters, or ethers, whenever the existence of such homologues, nitrogen-heterocyclic analogs, isomers, esters, ethers, salts, and salts of isomers, esters, or ethers is possible within the specific chemical class or designation. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or the compounds of these structures shall be included under this subparagraph, regardless of their specific numerical designation of atomic positions covered, if it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

a. Tetrahydrocannabinols.—Any tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis*, the synthetic equivalents of the substances contained in the plant


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or in the resinous extracts of the genus *Cannabis*, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, including, but not limited to, Delta 9 tetrahydrocannabinols and their optical isomers, Delta 8 tetrahydrocannabinols and their optical isomers, Delta 6a,10a tetrahydrocannabinols and their optical isomers, or any compound containing a tetrahydrobenzo[c]chromene structure with substitution at either or both the 3-position or 9-position, with or without substitution at the 1-position with hydroxyl or alkoxy groups, including, but not limited to:

(I) Tetrahydrocannabinol.

(II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-(2,3-dimethylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(X) Parahexyl.

b. Naphthoylindoles, Naphthoylindazoles, Naphthoylcarbazoles, Naphthylmethylindoles, Naphthylmethylindazoles, and Naphthylmethylcarbazoles.—Any compound containing a naphthoylindole, naphthoylindazole, naphthoylcarbazole, naphthylmethylindole, naphthylmethylindazole, or naphthylmethylcarbazole structure, with or without substitution on the indole, indazole, or carbazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

(II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-naphthoyl)indole).

(III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

(IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole).

(V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).

(VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).

(VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

(VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole).

(IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole).

(X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).

(XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).

(XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).

(XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).

(XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole).

(XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).

(XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

(XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-

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naphthoyl)indole).

(XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-naphthoyl)indole).

(XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).

(XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).

(XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).

(XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-naphthylmethyl]indole).

(XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-naphthoyl)indole).

(XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-naphthoyl)indole).

(XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole).

(XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).

(XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).

(XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).

(XXIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).

(XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).

(XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-naphthoyl)indole).

(XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-naphthoyl)indole).

(XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).

(XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-naphthoyl)indole).

(XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-naphthoyl)indole).

(XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).

(XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).

(XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-naphthoyl)indole).

(XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-naphthoyl)indole).

(XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).

(XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-naphthoyl)carbazole).

c. Naphthoylpyrroles.—Any compound containing a naphthoylpyrrole structure, with or without substitution on the pyrrole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).

(II) JWH-031 (1-Hexyl-3-(1-naphthoyl)pyrrole).

(III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-naphthoyl)pyrrole).

(VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-naphthoyl)pyrrole).

(X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-naphthoyl)pyrrole).

d. Naphthylmethylenindenes.—Any compound containing a

naphthylmethylenindene structure, with or without substitution at the 3-position of the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to, JWH-176 (3-Pentyl-1-(naphthylmethylene)indene).

e. Phenylacetylindoles and Phenylacetylindazoles.—Any compound containing a phenylacetylindole or phenylacetylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).

(II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

(III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).

(IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).

(V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).

(VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).

(VII) Cannabipiperidiethanone.

(VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).

f. Cyclohexylphenols.—Any compound containing a cyclohexylphenol structure, with or without substitution at the 5-position of the phenolic ring to any extent, whether or not substituted on the cyclohexyl ring to any extent, including, but not limited to:

(I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol).

(II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8) homologue).

(III) CP-55,940 (2-(3-Hydroxy-6-propanol-cyclohexyl)-5-(2-

methyloctan-2-yl)phenol).

g. Benzoylindoles and Benzoylindazoles.—Any compound containing a benzoylindole or benzoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).

(II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).

(III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodo-5-nitrobenzoyl)indole).

(IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-(4-methoxybenzoyl)indole).

(V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole).

(VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).

(VII) RCS-4 C4 homologue (1-Butyl-3-(4-methoxybenzoyl)indole).

(VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-3-(4-methoxybenzoyl)indole).

h. Tetramethylcyclopropanoylindoles and Tetramethylcyclopropanoylindazoles.—Any compound containing a tetramethylcyclopropanoylindole or tetramethylcyclopropanoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the tetramethylcyclopropyl group to any extent, including, but not limited to:

(I) UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-


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tetramethylcyclopropanoyl)indole).

(III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indazole).

(IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole carboxamides, and Adamantylindazole carboxamides.—Any compound containing an adamantoyl indole, adamantoyl indazole, adamantyl indole carboxamide, or adamantyl indazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the adamantyl ring to any extent, including, but not limited to:

(I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

(II) Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

(III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide).

(IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-adamantoyl)indole).

(V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).

(VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).

(VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-adamantoyl)indole).

j. Quinolinylindolecarboxylates, Quinolinylindazolecarboxylates, Quinolinylindolecarboxamides, and Quinolinylindazolecarboxamides.—Any compound containing a quinolinylindole carboxylate, quinolinylindazole carboxylate, isoquinolinylindole carboxylate, isoquinolinylindazole carboxylate, quinolinylindole carboxamide, quinolinylindazole carboxamide, isoquinolinylindole carboxamide, or isoquinolinylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the quinoline or isoquinoline ring to any extent, including, but not limited to:

(I) PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate).

(II) Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate).

(III) BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate).

(IV) FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) NPB-22 (8-Quinolinyl 1-pentylindazole-3-carboxylate).

(VI) Fluoro NPB-22 (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxylate).

(VII) FUB-NPB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indazole-3-carboxylate).

(VIII) THJ (8-Quinolinyl 1-pentylindazole-3-carboxamide).

(IX) Fluoro THJ (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxamide).

k. Naphthylindolecarboxylates and Naphthylindazolecarboxylates.—Any compound containing a naphthylindole carboxylate or naphthylindazole carboxylate structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-carboxylate).

(II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-carboxylate).

(III) Fluoro SDB-005 (1-Naphthalenyl 1-(fluoropentyl)indazole-3-carboxylate).

(IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-carboxylate).

l. Naphthylindole carboxamides and Naphthylindazole carboxamides.—Any compound containing a naphthylindole carboxamide or naphthylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).

(II) Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide).

(III) Chloro-NNEI (N-Naphthalen-1-yl 1-

(chloropentyl)indole-3-carboxamide).

(IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-carboxamide).

(V) Fluoro MN-18 (N-Naphthalen-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl indazole carboxamides, Alkylcarbonyl indole carboxylates, and Alkylcarbonyl indazole carboxylates.—Any compound containing an alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl, 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an indole carboxamide, indazole carboxamide, indole carboxylate, or indazole carboxylate, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the alkylcarbonyl group to any extent, including, but not limited to:

(I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindole-3-carboxamide).

(II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-

oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(XIV) Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).

(XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indole-3-carboxamide).

(XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide).

(XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

n. Cumylindolecarboxamides and Cumylindazolecarboxamides.—Any compound containing a N-(2-phenylpropan-2-yl) indole carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring of the cumyl group to any extent, including, but not limited to:

(I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-carboxamide).

(II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

o. Other Synthetic Cannabinoids.—Any material, compound, mixture, or preparation that contains any quantity of a Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

(I) With or without modification or replacement of a carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage between either two core rings, or linkage between a core ring and group structure, with or without the addition of a carbon or replacement of a carbon;

(II) With or without replacement of a core ring or group structure, whether or not substituted on the ring or group structures to any extent; and

(III) Is a cannabinoid receptor agonist, unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United

States Food and Drug Administration.

191. Substituted Cathinones.—Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations:

a. Any compound containing a 2-amino-1-phenyl-1-propanone structure;

b. Any compound containing a 2-amino-1-naphthyl-1-propanone structure; or

c. Any compound containing a 2-amino-1-thiophenyl-1-propanone structure,

whether or not the compound is further modified:

(I) With or without substitution on the ring system to any extent with alkyl, alkylthio, thio, fused alkylenedioxy, alkoxy, haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide substituents;

(II) With or without substitution at the 3-propanone position with an alkyl substituent or removal of the methyl group at the 3-propanone position;

(III) With or without substitution at the 2-amino nitrogen atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or not further substituted in the ring system; or

(IV) With or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:

(A) Methcathinone.
(B) Ethcathinone.
(C) Methylone (3,4-Methylenedioxymethcathinone).
(D) 2,3-Methylenedioxymethcathinone.
(E) MDPV (3,4-Methylenedioxypyrovalerone).
(F) Methylmethcathinone.
(G) Methoxymethcathinone.
(H) Fluoromethcathinone.
(I) Methylethcathinone.
(J) Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone).
(K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
(L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).
(M) Naphyrone (Naphthylpyrovalerone).
(N) Bromomethcathinone.
(O) Buphedrone (alpha-Methylaminobutyrophenone).
(P) Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone).
(Q) Dimethylcathinone.
(R) Dimethylmethcathinone.
(S) Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone).
(T) Pentedrone (alpha-Methylaminovalerophenone).
(U) MDPPP (3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone).
(V) MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone).
(W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).
(X) PPP (Pyrrolidinopropiophenone).


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(Y) PVP (Pyrrolidinovalerophenone) or (Pyrrolidinopentiophenone).

(Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).

(AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).

(BB) F-MABP (Fluoromethylaminobutyrophenone).

(CC) Me-EABP (Methylethylaminobutyrophenone).

(DD) PBP (Pyrrolidinobutyrophenone).

(EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).

(FF) Et-PBP (Ethylpyrrolidinobutyrophenone).

(GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).

(HH) Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).

(II) 3,4-Methylenedioxy-N,N-diethylcathinone.

(JJ) 3,4-Methylenedioxy-N-acetylcathinone.

(KK) 3,4-Methylenedioxy-N-acetylmethcathinone.

(LL) 3,4-Methylenedioxy-N-acetylethcathinone.

(MM) Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone).

(NN) Methyl-alpha-methylaminohexanophenone.

(OO) N-Ethyl-N-methylcathinone.

(PP) PHP (Pyrrolidinohexanophenone).

(QQ) PV8 (Pyrrolidinoheptanophenone).

(RR) Chloromethcathinone.

(SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.

192. Substituted Phenethylamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers,

and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure, without a beta-keto group, and without a benzyl group attached to the amine group, whether or not the compound is further modified with or without substitution on the phenyl ring to any extent with alkyl, alkylthio, nitro, alkoxy, thio, halide, fused alkylenedioxy, fused furan, fused benzofuran, fused dihydrofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha or beta position by any alkyl substituent, with or without substitution at the nitrogen atom, and with or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:

a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).

b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).

c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).

d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).

e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).

f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).

g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).

h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).

i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).

j. 2C-H (2,5-Dimethoxyphenethylamine).

k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).

l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

m. MDMA (3,4-Methylenedioxymethamphetamine).

n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).

o. MDA (3,4-Methylenedioxyamphetamine).
p. 2,5-Dimethoxyamphetamine.
q. Fluoroamphetamine.
r. Fluoromethamphetamine.
s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
t. DOB (4-Bromo-2,5-dimethoxyamphetamine).
u. DOC (4-Chloro-2,5-dimethoxyamphetamine).
v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).
w. DOI (4-Iodo-2,5-dimethoxyamphetamine).
x. DOM (4-Methyl-2,5-dimethoxyamphetamine).
y. PMA (4-Methoxyamphetamine).
z. N-Ethylamphetamine.
aa. 3,4-Methylenedioxy-N-hydroxyamphetamine.
bb. 5-Methoxy-3,4-methylenedioxyamphetamine.
cc. PMMA (4-Methoxymethamphetamine).
dd. N,N-Dimethylamphetamine.
ee. 3,4,5-Trimethoxyamphetamine.
ff. 4-APB (4-(2-Aminopropyl)benzofuran).
gg. 5-APB (5-(2-Aminopropyl)benzofuran).
hh. 6-APB (6-(2-Aminopropyl)benzofuran).
ii. 7-APB (7-(2-Aminopropyl)benzofuran).
jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).
kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).
ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).
mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).
nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).
oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).
pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).
qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).


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rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).

ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-dihydrobenzofuran),

which does not include phenethylamine, mescaline as described in subparagraph 20., substituted cathinones as described in subparagraph 191., N-Benzyl phenethylamine compounds as described in subparagraph 193., or methamphetamine as described in subparagraph (2)(c)4.

193. N-Benzyl Phenethylamine Compounds.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure without a beta-keto group, with substitution on the nitrogen atom of the amino group with a benzyl substituent, with or without substitution on the phenyl or benzyl ring to any extent with alkyl, alkoxy, thio, alkylthio, halide, fused alkylenedioxy, fused furan, fused benzofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha position by any alkyl substituent, including, but not limited to:

a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-

hydroxybenzyl)]phenethylamine).

c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

q. 25H-NBOH (2,5-Dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

r. 25H-NBF (2,5-Dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine),

which does not include substituted cathinones as described in subparagraph 191.

194. Substituted Tryptamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation containing a 2-(1H-indol-3-yl)ethanamine, for example tryptamine, structure with or without mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups, or by inclusion of the amino nitrogen atom in a cyclic structure, whether or not substituted at the alpha position with an alkyl group, whether or not substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, including, but not limited to:

a. Alpha-Ethyltryptamine.

b. Bufotenine.

c. DET (Diethyltryptamine).

d. DMT (Dimethyltryptamine).

e. MET (N-Methyl-N-ethyltryptamine).

f. DALT (N,N-Diallyltryptamine).

g. EiPT (N-Ethyl-N-isopropyltryptamine).

h. MiPT (N-Methyl-N-isopropyltryptamine).


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i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
j. 5-Hydroxy-N-methyltryptamine.
k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
m. Methyltryptamine.
n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
q. DiPT (N,N-Diisopropyltryptamine).
r. DPT (N,N-Dipropyltryptamine).
s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).
v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).
w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).
x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).
y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-isopropyltryptamine).
z. Methyl-alpha-ethyltryptamine.
aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),

which does not include tryptamine, psilocyn as described in subparagraph 34., or psilocybin as described in subparagraph 33.

195. Substituted Phenylcyclohexylamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation containing a phenylcyclohexylamine structure, with or without any substitution on the phenyl ring,

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any substitution on the cyclohexyl ring, any replacement of the phenyl ring with a thiophenyl or benzothiophenyl ring, with or without substitution on the amine with alkyl, dialkyl, or alkoxy substituents, inclusion of the nitrogen in a cyclic structure, or any combination of the above, including, but not limited to:

a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine).

b. PCE (N-Ethyl-1-phenylcyclohexylamine)(Ethylamine analog of phencyclidine).

c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine)(Pyrrolidine analog of phencyclidine).

d. PCPr (Phenylcyclohexylpropylamine).

e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)(Thiophene analog of phencyclidine).

f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).

g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).

h. Methoxetamine.

i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).

j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).

k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).

l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).

m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).

n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).

o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).

p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).

q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).

r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).

196. W-15, 4-chloro-N-[1-(2-phenylethyl)-2-piperidinylidene]-benzenesulfonamide.

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197. W-18, 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-piperidinylidene]-benzenesulfonamide.

198. AH-7921, 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]-benzamide.

199. U47700, trans-3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide.

200. MT-45, 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine, dihydrochloride.

Section 5. Paragraph (c) of subsection (6) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(6)

(c) Except as provided in this chapter, a person may not possess more than 10 grams of any substance named or described in s. 893.03(1)(a), ~~or~~ (1)(b), or (2)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Paragraphs (c), (d), and (k) of subsection (1) of section 893.135, Florida Statutes, are amended, and paragraphs (m) and (n) are added to that subsection, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or

more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as described in s. 893.03(2)(a)1.g., or any salt~~, derivative, isomer, or salt of an isomer~~ thereof, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 200 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.o., or any salt~~, derivative, isomer, or salt of an isomer~~ thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

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

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

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

(IV) Sufentanil, as described in s. 893.03(2)(b)29.;

(V) A fentanyl derivative, as described in s. 893.03(1)(a)62.;

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or

(VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as "trafficking in fentanyl," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment

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of 3 years, and shall be ordered to pay a fine of $50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and shall be ordered to pay a fine of $100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of $500,000.

5.~~4.~~ A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person’s conduct in committing that act led to a

natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6.~~5.~~ A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(d)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine, as described in s. 893.03(2)(b)23., a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture containing phencyclidine, as described in s. 893.03(2)(b)23. ~~893.03(2)(b)~~, a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s.

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893.03(1)(c)13., 32., 38., 103., or 146.,
commits a felony of the first degree, which felony shall be known as "trafficking in phencyclidine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly brings into this state 800 grams or more of phencyclidine, as described in s. 893.03(2)(b)23., a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture containing phencyclidine, as described in s. 893.03(2)(b)23. ~~893.03(2)(b)~~, a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the probable result of such importation would be the death of any person commits capital importation of phencyclidine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall

also be sentenced to pay the maximum fine provided under subparagraph 1.

(k)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of a ~~any of the following substances described in s. 893.03(1)(c)~~:

a. Substance described in s. 893.03(1)(c)4., 5., 10., 11., 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86., 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163., 165., or 187.-189., a substituted cathinone, as described in s. 893.03(1)(c)191., or substituted phenethylamine, as described in s. 893.03(1)(c)192.;

b. Mixture containing any substance described in sub-subparagraph a.; or

c. Salt, isomer, ester, or ether or salt of an isomer, ester, or ether of a substance described in sub-subparagraph a.,

~~a. (MDMA) 3,4-Methylenedioxymethamphetamine;~~

~~b. DOB (4-Bromo-2,5-dimethoxyamphetamine);~~

~~c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~

~~d. 2,5-Dimethoxyamphetamine;~~

~~e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~

~~f. N-ethylamphetamine;~~

~~g. 3,4-Methylenedioxy-N-hydroxyamphetamine;~~

~~h. 5-Methoxy-3,4-methylenedioxyamphetamine;~~

~~i. PMA (4-methoxyamphetamine);~~

~~j. PMMA (4-methoxymethamphetamine);~~

~~k. DOM (4-Methyl-2,5-dimethoxyamphetamine);~~

~~l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~

~~m. MDA (3,4-Methylenedioxyamphetamine);~~
~~n. N,N-dimethylamphetamine;~~
~~o. 3,4,5-Trimethoxyamphetamine;~~
~~p. Methylone (3,4-Methylenedioxymethcathinone);~~
~~q. MDPV (3,4-Methylenedioxypyrovalerone); or~~
~~r. Methylmethcathinone,~~

~~individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r.,~~ commits a felony of the first degree, which felony shall be known as "trafficking in phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 10 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $250,000.

3. A person who knowingly manufactures or brings into this state 30 kilograms or more of a substance described in sub-subparagraph 1.a., a mixture described in sub-subparagraph 1.b., or a salt, isomer, ester, or ether or a salt of an isomer, ester, or ether described in sub-subparagraph 1.c., ~~any of the~~

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~~following substances described in s. 893.03(1)(c):~~

~~a. MDMA (3,4-Methylenedioxymethamphetamine);~~

~~b. DOB (4-Bromo-2,5-dimethoxyamphetamine);~~

~~c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~

~~d. 2,5-Dimethoxyamphetamine;~~

~~e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~

~~f. N-ethylamphetamine;~~

~~g. N-Hydroxy-3,4-methylenedioxyamphetamine;~~

~~h. 5-Methoxy-3,4-methylenedioxyamphetamine;~~

~~i. PMA (4-methoxyamphetamine);~~

~~j. PMMA (4-methoxymethamphetamine);~~

~~k. DOM (4-Methyl-2,5-dimethoxyamphetamine);~~

~~l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~

~~m. MDA (3,4-Methylenedioxyamphetamine);~~

~~n. N,N-dimethylamphetamine;~~

~~o. 3,4,5-Trimethoxyamphetamine;~~

~~p. Methylone (3,4-Methylenedioxymethcathinone);~~

~~q. MDPV (3,4-Methylenedioxypyrovalerone); or~~

~~r. Methylmethcathinone,~~

~~individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r.,~~ and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of phenethylamines, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine ~~provided~~ under subparagraph 2. ~~1.~~

(m)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 280 grams or more of a:

a. Substance described in s. 893.03(1)(c)30., 46.-50., 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic cannabinoid, as described in s. 893.03(1)(c)190.; or

b. Mixture containing any substance described in sub-subparagraph a.,

commits a felony of the first degree, which felony shall be known as "trafficking in synthetic cannabinoids," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 280 grams or more, but less than 500 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 500 grams or more, but less than 1 kilogram, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 1 kilogram or more, but less than 30 kilograms such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of $200,000.

d. Is 30 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and the defendant shall be ordered to pay a fine of $750,000.

(n)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of:

a. A substance described in s. 893.03(1)(c)164., 174., or 175., a n-benzyl phenethylamine compound, as described in s. 893.03(1)(c)193.; or

b. A mixture containing any substance described in sub-subparagraph a.,

commits a felony of the first degree, which felony shall be known as "trafficking in n-benzyl phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 14 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 100 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of $500,000.

3. A person who knowingly manufactures or brings into this state 400 grams or more of a substance described in sub-subparagraph 1.a. or a mixture described in sub-subparagraph 1.b., and who knows that the probable result of such manufacture

or importation would be the death of any person commits capital manufacture or importation of a n-benzyl phenethylamine compound, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine under subparagraph 2.

Section 7. For the purpose of incorporating the amendments made by this act to sections 893.03, 893.13, and 893.135, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), and (e) subsection (3) of section 921.0022, Florida Statutes, are reenacted; and paragraphs (g), (h), and (i) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
212.15(2)(b)	3rd	Failure to remit sales taxes,

			amount greater than $300 but less than $20,000.
1540			
	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
1541			
	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
1542			
	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
1543			
	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
1544			
	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
1545			
	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
1546			
	322.212(5)(a)	3rd	False application for driver license or identification card.

1547			
	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than $200.
1548			
	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
1549			
	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than $300.
1550			
	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
1551			
	562.27(1)	3rd	Possess still or still apparatus.
1552			
	713.69	3rd	Tenant removes property upon which lien has accrued, value more than $50.
1553			
	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).

812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled

			substances, all but s. 893.03(5) drugs.
1562			
	832.041(1)	3rd	Stopping payment with intent to defraud $150 or more.
1563			
	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks $150 or more or obtaining property in return for worthless check $150 or more.
1564			
	838.15(2)	3rd	Commercial bribe receiving.
1565			
	838.16	3rd	Commercial bribery.
1566			
	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
1567			
	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
1568			
	849.01	3rd	Keeping gambling house.
1569			
	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money

			by means of lottery.
1570			
	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
1571			
	849.25(2)	3rd	Engaging in bookmaking.
1572			
	860.08	3rd	Interfere with a railroad signal.
1573			
	860.13(1)(a)	3rd	Operate aircraft while under the influence.
1574			
	893.13(2)(a)2.	3rd	Purchase of cannabis.
1575			
	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
1576			
	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
1577			
1578			
1579			
1580	(b) LEVEL 2		
1581			
	Florida Statute	Felony Degree	Description

379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor

		beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $300, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.

817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.

1604	831.01	3rd	Forgery.
1605	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
1606	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
1607	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
1608	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
1609	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
1610	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
1611	843.08	3rd	False personation.
	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,

		(2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor

			vehicle with identification number plate removed.
1623			
	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
1624			
	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
1625			
	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
1626			
	327.35(2)(b)	3rd	Felony BUI.
1627			
	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
1628			
	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
1629			
	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.

379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.

1635			
	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
1636			
	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
1637			
	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
1638			
	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
1639			
	697.08	3rd	Equity skimming.
1640			
	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
1641			
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
1642			
	806.10(2)	3rd	Interferes with or assaults firefighter in performance of

			duty.
1643			
	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
1644			
	812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
1645			
	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
1646			
	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
1647			
	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
1648			
	817.233	3rd	Burning to defraud insurer.
1649			
	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
1650			
	817.234(11)(a)	3rd	Insurance fraud; property value

			less than $20,000.
1651			
	817.236	3rd	Filing a false motor vehicle insurance application.
1652			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
1653			
	817.413(2)	3rd	Sale of used goods as new.
1654			
	817.505(4)	3rd	Patient brokering.
1655			
	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
1656			
	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
1657			
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
1658			
	838.021(3)(b)	3rd	Threatens unlawful harm to

			public servant.
1659			
	843.19	3rd	Injure, disable, or kill police dog or horse.
1660			
	860.15(3)	3rd	Overcharging for repairs and parts.
1661			
	870.01(2)	3rd	Riot; inciting or encouraging.
1662			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
1663			
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
1664			
	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8.,

			(2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
1665			
	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
1666			
	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
1667			
	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
1668			
	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
1669			
	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
1670			
	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by

			chapter 893.
1671			
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner’s practice.
1672			
	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner’s practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
1673			
	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
1674			
	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

Florida Statute	Felony Degree	Description
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.

784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering

			to designated person.
1701			
	787.07	3rd	Human smuggling.
1702			
	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
1703			
	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
1704			
	790.115(2)(c)	3rd	Possessing firearm on school property.
1705			
	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
1706			
	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
1707			
	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
1708			
	810.06	3rd	Burglary; possession of tools.

1709			
	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
1710			
	812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
1711			
	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
1712			
	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
1713			
	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
1714			
	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
1715			
	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
1716			
	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent

			breeding disability to any registered horse or cattle.
1717			
	837.02(1)	3rd	Perjury in official proceedings.
1718			
	837.021(1)	3rd	Make contradictory statements in official proceedings.
1719			
	838.022	3rd	Official misconduct.
1720			
	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
1721			
	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
1722			
	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
1723			
	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
1724			
	843.15(1)(a)	3rd	Failure to appear while on bail

			for felony (bond estreature or bond jumping).
1725			
	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
1726			
	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
1727			
	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
1728			
	914.14(2)	3rd	Witnesses accepting bribes.
1729			
	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
1730			
	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
1731			
	918.12	3rd	Tampering with jurors.
1732			
	934.215	3rd	Use of two-way communications device to facilitate commission

of a crime.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone

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			crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
1744			
	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
1745			
	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
1746			
	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
1747			
	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.

440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.

	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
1756			
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
1757			
	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
1758			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
1759			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
1760			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
1761			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
1762			
	812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and

			one or more specified acts.
1763			
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
1764			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
1765			
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
1766			
	817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
1767			
	817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
1768			
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
1769			
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud,

			$5,000 or more or use of personal identification information of 10 or more persons.
1770			
	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
1771			
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
1772			
	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
1773			
	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
1774			
	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
1775			

	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
1776			
	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
1777			
	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
1778			
	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
1779			
	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
1780			
	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
1781			
	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.

893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug

			prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.		1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)		2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)		3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(g) LEVEL 7

Florida	Felony	Description

Statute	Degree	
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.

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409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.

464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(7)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.

494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.

775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.

784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.

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790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.

796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied

			dwelling; unarmed; no assault or battery.
1858			
	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
1859			
	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
1860			
	812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
1861			
	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
1862			
	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
1863			
	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.

1864			
	812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
1865			
	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
1866			
	812.131(2)(a)	2nd	Robbery by sudden snatching.
1867			
	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
1868			
	817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
1869			
	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
1870			
	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1871			
	817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
1872			
	817.2341	1st	Making false entries of

	(2)(b) & (3)(b)		material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
1873			
	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
1874			
	817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
1875			
	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
1876			
	825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $10,000 or more, but less than $50,000.
1877			
	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
1878			
	827.04(3)	3rd	Impregnation of a child under

			16 years of age by person 21 years of age or older.
1879			
	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
1880			
	838.015	2nd	Bribery.
1881			
	838.016	2nd	Unlawful compensation or reward for official behavior.
1882			
	838.021(3)(a)	2nd	Unlawful harm to a public servant.
1883			
	838.22	2nd	Bid tampering.
1884			
	843.0855(2)	3rd	Impersonation of a public officer or employee.
1885			
	843.0855(3)	3rd	Unlawful simulation of legal process.
1886			
	843.0855(4)	3rd	Intimidation of a public officer or employee.
1887			
	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.

847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver

			cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
1894			
	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
1895			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
1896			
	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
1897			
	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
1898			
	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
1899			
	893.135	1st	Trafficking in hydrocodone, 28

	(1)(c)2.b.		grams or more, less than 50 grams.
1900			
	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
1901			
	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
1902			
	893.135 (1)(c)4.b.(I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
1903			
	893.135(1)(d)1.a. ~~893.135(1)(d)1.~~	1st	Trafficking in phencyclidine, ~~more than~~ 28 grams or more, less than 200 grams.
1904			
	893.135(1)(e)1.	1st	Trafficking in methaqualone, ~~more than~~ 200 grams or more, less than 5 kilograms.
1905			
	893.135(1)(f)1.	1st	Trafficking in amphetamine, ~~more than~~ 14 grams or more, less than 28 grams.
1906			
	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14

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		grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.135(1)(m)2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
893.135(1)(m)2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1 kilogram.
893.135(1)(n)2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing

		of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or

			conceal a sexual offender.
1920			
	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
1921			
	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
1922			
	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1923			
	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1924			
	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
1925			
	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a


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		digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.

	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
1937			
	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
1938			
	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less than $100,000 by money transmitter.
1939			
	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
1940			
	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
1941			
	777.03(2)(a)	1st	Accessory after the fact, capital felony.
1942			
	782.04(4)	2nd	Killing of human without design

			when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
1943			
	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
1944			
	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
1945			
	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
1946			
	787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
1947			
	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
1948			

	787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
1949			
	787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.
1950			
	787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
1951			
	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
1952			
	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
1953			
	794.011(5)(b)	2nd	Sexual battery; victim and

			offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
1954			
	794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
1955			
	794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
1956			
	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
1957			
	800.04(4)(b)	2nd	Lewd or lascivious battery.
1958			
	800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.

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1959			
	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
1960			
	810.02(2)(a)	1st,PBL	Burglary with assault or battery.
1961			
	810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
1962			
	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
1963			
	812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
1964			
	812.13(2)(b)	1st	Robbery with a weapon.
1965			
	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
1966			
	817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.

1967			
	817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
1968			
	817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
1969			
	817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
1970			
	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
1971			
	817.611(2)(c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
1972			
	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
1973			

825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $50,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
1981			
	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
1982			
	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
1983			
	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
1984			
	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
1985			
	893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
1986			
	893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
1987			
	893.135	1st	Trafficking in fentanyl, 14

	(1)(c)4.b.(II)		grams or more, less than 28 grams.
1988			
	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, ~~more than~~ 200 grams or more, less than 400 grams.
1989			
	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, ~~more than~~ 5 kilograms or more, less than 25 kilograms.
1990			
	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, ~~more than~~ 28 grams or more, less than 200 grams.
1991			
	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
1992			
	893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
1993			
	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
1994			
	893.135	1st	Trafficking in Phenethylamines,

(1)(k)2.b.		200 grams or more, less than 400 grams.
893.135(1)(m)2.c.	1st	Trafficking in synthetic cannabinoids, 1 kilogram or more, less than 30 kilograms.
893.135(1)(n)2.b.	1st	Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.
893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.

896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than $100,000.

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35 (3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
499.0051(8)	1st	Knowing sale or purchase of

			contraband prescription drugs resulting in great bodily harm.
2012			
	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.
2013			
	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
2014			
	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
2015			
	775.0844	1st	Aggravated white collar crime.
2016			
	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
2017			
	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified

			felonies.
2018			
	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
2019			
	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
2020			
	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
2021			
	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
2022			
	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
2023			
	787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery,

			molestation, conduct, or exhibition.
2024			
	787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
2025			
	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
2026			
	787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
2027			
	790.161	1st	Attempted capital destructive device offense.
2028			
	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
2029			
	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
2030			

	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
2031			
	794.011(4)(a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
2032			
	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
2033			
	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
2034			
	794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
2035			
	794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to

			18 years by person in familial or custodial authority.
2036			
	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
2037			
	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
2038			
	812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
2039			
	812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
2040			
	812.135(2)(b)	1st	Home-invasion robbery with weapon.
2041			
	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
2042			
	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or

			under supervision.
2043			
	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
2044			
	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
2045			
	827.03(2)(a)	1st	Aggravated child abuse.
2046			
	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
2047			
	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
2048			
	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical

			compounds into food, drink, medicine, or water with intent to kill or injure another person.
2049			
	893.135	1st	Attempted capital trafficking offense.
2050			
	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
2051			
	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
2052			
	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
2053			
	893.135 (1)(c)2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.
2054			
	893.135 (1)(c)3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
2055			
	893.135 (1)(c)4.b.(III)	1st	Trafficking in fentanyl, 28 grams or more.

2056			
	893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, ~~more than~~ 400 grams or more.
2057			
	893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, ~~more than~~ 25 kilograms or more.
2058			
	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, ~~more than~~ 200 grams or more.
2059			
	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
2060			
	893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
2061			
	893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
2062			
	893.135 (1)(m)2.d.	1st	Trafficking in synthetic cannabinoids, 30 kilograms or more.
2063			
	893.135(1)(n)2.c.	1st	Trafficking in n-benzyl phenethylamines, 200 grams or more.
2064			
	896.101(5)(c)	1st	Money laundering, financial

			instruments totaling or exceeding $100,000.
896.104(4)(a)3.		1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

Section 8. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 39.806, Florida Statutes, is reenacted to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(d) When the parent of a child is incarcerated and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a significant portion of the child’s minority. When determining whether the period of time is significant, the court shall consider the child’s age and the child’s need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of


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first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child. When determining harm, the court shall consider the following factors:

a. The age of the child.

b. The relationship between the child and the parent.

c. The nature of the parent's current and past provision for the child's developmental, cognitive, psychological, and physical needs.

d. The parent's history of criminal behavior, which may include the frequency of incarceration and the unavailability of the parent to the child due to incarceration.

e. Any other factor the court deems relevant.

Section 9. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a

reference thereto, paragraph (b) of subsection (4) of section 63.089, Florida Statutes, is reenacted to read:

63.089 Proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.—

(4) FINDING OF ABANDONMENT.—A finding of abandonment resulting in a termination of parental rights must be based upon clear and convincing evidence that a parent or person having legal custody has abandoned the child in accordance with the definition contained in s. 63.032. A finding of abandonment may also be based upon emotional abuse or a refusal to provide reasonable financial support, when able, to a birth mother during her pregnancy or on whether the person alleged to have abandoned the child, while being able, failed to establish contact with the child or accept responsibility for the child's welfare.

(b) The child has been abandoned when the parent of a child is incarcerated on or after October 1, 2001, in a federal, state, or county correctional institution and:

1. The period of time for which the parent has been or is expected to be incarcerated will constitute a significant portion of the child's minority. In determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by a court of competent jurisdiction to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, convicted of child abuse as defined in s.

827.03, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of a substantially similar offense in another jurisdiction. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, termination of the parental rights of the incarcerated parent is in the best interests of the child.

Section 10. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, subsection (10) of section 95.11, Florida Statutes, is reenacted to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph (4)(d), an action for wrongful death seeking damages authorized under s. 768.21 brought against a natural person for an intentional tort resulting in death from acts described in s.

782.04 or s. 782.07 may be commenced at any time. This subsection shall not be construed to require an arrest, the filing of formal criminal charges, or a conviction for a violation of s. 782.04 or s. 782.07 as a condition for filing a civil action.

Section 11. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, paragraph (b) of subsection (1) and paragraphs (a), (b), and (c) of subsection (3) of section 775.082, Florida Statutes, are reenacted to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)

(b)1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04

of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed before October 1, 1983, by a term of imprisonment for life or for a term of at least 30 years.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4.a. Except as provided in sub-subparagraph b., for a life

felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of at least 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

5. Notwithstanding subparagraphs 1.-4., a person who is convicted under s. 782.04 of an offense that was reclassified as a life felony which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon

whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

6. For a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g), by a term of imprisonment for life.

(b)1. For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

2. Notwithstanding subparagraph 1., a person convicted under s. 782.04 of a first degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life, which was committed before the person attained 18 years of age may be punished by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a

person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(c) Notwithstanding paragraphs (a) and (b), a person convicted of an offense that is not included in s. 782.04 but that is an offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(d).

Section 12. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, subsections (1) and (2) of section 775.0823, Florida Statutes, are reenacted to read:

775.0823 Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.—The Legislature does

hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to s. 27.01 or assistant state attorney appointed under s. 27.181; or against any justice or judge of a court described in Art. V of the State Constitution, which offense arises out of or in the scope of the officer's duty as a law enforcement or correctional officer, the state attorney's or assistant state attorney's duty as a prosecutor or investigator, or the justice's or judge's duty as a judicial officer, as follows:

(1) For murder in the first degree as described in s. 782.04(1), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release.

(2) For attempted murder in the first degree as described in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

Section 13. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, subsection (1) of section 921.16, Florida Statutes, is reenacted to read:

921.16 When sentences to be concurrent and when consecutive.—

(1) A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently. Any sentence for sexual battery as defined in chapter 794 or murder as defined in s. 782.04 must be imposed consecutively to any other sentence for sexual battery or murder which arose out of a separate criminal episode or transaction.

Section 14. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (c) of subsection (8) of section 948.06, Florida Statutes, is reenacted to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(8)

(c) For purposes of this section, the term "qualifying offense" means any of the following:

1. Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), or luring or enticing a child under s. 787.025(2)(b) or (c).

2. Murder or attempted murder under s. 782.04, attempted felony murder under s. 782.051, or manslaughter under s. 782.07.

3. Aggravated battery or attempted aggravated battery under s. 784.045.

4. Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c).

5. Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious conduct under s. 800.04(6)(b), lewd or lascivious exhibition under s. 800.04(7)(b), or lewd or lascivious exhibition on computer under s. 847.0135(5)(b).

6. Robbery or attempted robbery under s. 812.13, carjacking or attempted carjacking under s. 812.133, or home invasion robbery or attempted home invasion robbery under s. 812.135.

7. Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025.

8. Sexual performance by a child or attempted sexual performance by a child under s. 827.071.

9. Computer pornography under s. 847.0135(2) or (3), transmission of child pornography under s. 847.0137, or selling or buying of minors under s. 847.0145.

10. Poisoning food or water under s. 859.01.

11. Abuse of a dead human body under s. 872.06.

12. Any burglary offense or attempted burglary offense that is either a first degree felony or second degree felony under s. 810.02(2) or (3).

13. Arson or attempted arson under s. 806.01(1).

14. Aggravated assault under s. 784.021.

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15. Aggravated stalking under s. 784.048(3), (4), (5), or (7).

16. Aircraft piracy under s. 860.16.

17. Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4).

18. Treason under s. 876.32.

19. Any offense committed in another jurisdiction which would be an offense listed in this paragraph if that offense had been committed in this state.

Section 15. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 948.062, Florida Statutes, is reenacted to read:

948.062 Reviewing and reporting serious offenses committed by offenders placed on probation or community control.—

(1) The department shall review the circumstances related to an offender placed on probation or community control who has been arrested while on supervision for the following offenses:

(a) Any murder as provided in s. 782.04;

Section 16. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 985.265, Florida Statutes, is reenacted to read:

985.265 Detention transfer and release; education; adult jails.—

(3)

(b) When a juvenile is released from secure detention or transferred to nonsecure detention, detention staff shall immediately notify the appropriate law enforcement agency,

school personnel, and victim if the juvenile is charged with committing any of the following offenses or attempting to commit any of the following offenses:

1. Murder, under s. 782.04;

2. Sexual battery, under chapter 794;

3. Stalking, under s. 784.048; or

4. Domestic violence, as defined in s. 741.28.

Section 17. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 1012.315, Florida Statutes, is reenacted to read:

1012.315 Disqualification from employment.—A person is ineligible for educator certification, and instructional personnel and school administrators, as defined in s. 1012.01, are ineligible for employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students under s. 1002.39 or s. 1002.395, if the person, instructional personnel, or school administrator has been convicted of:

(1) Any felony offense prohibited under any of the following statutes:

(d) Section 782.04, relating to murder.

Section 18. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (g) of subsection (2) of section 1012.467, Florida Statutes, is reenacted to read:

1012.467 Noninstructional contractors who are permitted access to school grounds when students are present; background

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screening requirements.—

(2)

(g) A noninstructional contractor for whom a criminal history check is required under this section may not have been convicted of any of the following offenses designated in the Florida Statutes, any similar offense in another jurisdiction, or any similar offense committed in this state which has been redesignated from a former provision of the Florida Statutes to one of the following offenses:

1. Any offense listed in s. 943.0435(1)(h)1., relating to the registration of an individual as a sexual offender.

2. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and the reporting of such sexual misconduct.

3. Section 394.4593, relating to sexual misconduct with certain mental health patients and the reporting of such sexual misconduct.

4. Section 775.30, relating to terrorism.

5. Section 782.04, relating to murder.

6. Section 787.01, relating to kidnapping.

7. Any offense under chapter 800, relating to lewdness and indecent exposure.

8. Section 826.04, relating to incest.

9. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

Section 19. This act shall take effect October 1, 2017.

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

And the title is amended as follows:

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Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to controlled substances; amending s. 381.887, F.S.; providing that certain emergency responders and crime laboratory personnel may possess, store, and administer emergency opioid antagonists; amending s. 782.04, F.S.; providing that unlawful distribution of specified controlled substances and analogs or mixtures thereof by an adult which proximately cause a death is murder; providing criminal penalties; creating s. 893.015, F.S.; specifying purpose relating to drug abuse prevention and control; providing that a reference to ch. 893, F.S., or to any section or portion thereof, includes all subsequent amendments; amending s. 893.03, F.S.; adding certain synthetic opioid substitute compounds to the list of Schedule I controlled substances; amending s. 893.13, F.S.; prohibiting possession of more than 10 grams of specified substances; providing criminal penalties; amending s. 893.135, F.S.; revising the substances that constitute the offenses of trafficking and capital trafficking in, and capital importation of, hydrocodone and oxycodone; creating the offense of trafficking in fentanyl; providing penalties and specifying minimum terms of imprisonment and fines based on the quantity involved in the offense; revising the substances that constitute the offenses of trafficking in phencyclidine and capital

importation of phencyclidine; revising the substances that constitute trafficking in phenethylamines and capital manufacture or importation of phenethylamines; creating the offense of trafficking in synthetic cannabinoids; providing penalties and specifying minimum terms of imprisonment and fines based on the quantity involved in the offense; creating the offenses of trafficking in n-benzyl phenethylamines and capital manufacture or importation of a n-benzyl phenethylamine compound; providing penalties and specifying minimum terms of imprisonment and fines based on the quantity involved in the offense; reenacting and amending s. 921.0022, F.S.; ranking offenses on the offense severity ranking chart of the Criminal Punishment Code; incorporating the amendments made by the act in cross-references to amended provisions; reenacting ss. 39.806(1)(d), 63.089(4)(b), 95.11(10), 775.082(1)(b) and (3)(a), (b), and (c), 775.0823(1) and (2), 921.16(1), 948.06(8)(c), 948.062(1)(a), 985.265(3)(b), 1012.315(1)(d), and 1012.467(2)(g), relating to grounds for termination of parental rights, proceeding to terminate parental rights pending adoption, limitations other than for the recovery of real property, penalties, violent offenses committed against specified officials, when sentences to be concurrent and when consecutive, violation of probation or community control, reviewing and reporting serious offenses committed by offenders placed on probation or community control, detention

transfer and release, disqualification from employment, and noninstructional contractors who are permitted access to school grounds when students are present, respectively, to incorporate the amendments made by the act in cross-references to amended provisions; providing an effective date.

355094

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment to Amendment (145864) (with directory and title amendments)

Between lines 1524 and 1525
insert:

(8) For an offense listed under this section committed on or after October 1, 2017, which carries a mandatory minimum sentence, a court may depart from the applicable mandatory minimum sentence if, in giving due regard to the nature of the crime, history, and character of the defendant, and the

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defendant's chances of successful rehabilitation, the court finds compelling reasons on the record that imposition of the mandatory minimum is not necessary for the protection of the public. Each month, a court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons in each case in which the court departed from the mandatory minimum sentence.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete lines 1190 - 1192

and insert:

Section 6. Paragraphs (c), (d), and (k) of subsection (1) of section 893.135, Florida Statutes, are amended, and paragraphs (m) and (n) are added to that subsection, and a new subsection (8) is added to that section, to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:

Between lines 2533 and 2534

insert:

authorizing a court to depart from a mandatory minimum sentence for drug trafficking if the court finds compelling reasons that the mandatory minimum sentence is not necessary for the protection of the public; requiring a court to submit written reasons for such departure to the Office of Economic and Demographic Research;

By the Committees on Judiciary; and Criminal Justice; and
Senators Steube, Baxley, Passidomo, Artiles, and Mayfield

590-04115-17 2017150c2

A bill to be entitled

An act relating to controlled substances; amending s. 381.887, F.S.; providing that certain emergency responders and crime laboratory personnel may possess, store, and administer emergency opioid antagonists; amending s. 782.04, F.S.; providing that unlawful distribution of specified controlled substances and analogs or mixtures thereof by an adult which proximately cause a death is murder; providing criminal penalties; creating s. 893.015, F.S.; specifying the purpose relating to drug abuse prevention and control; providing that a reference to ch. 893, F.S., or to any section or portion thereof, includes all subsequent amendments; amending s. 893.03, F.S.; adding certain synthetic opioid substitute compounds to the list of Schedule I controlled substances; amending s. 893.13, F.S.; prohibiting possession of more than 10 grams of specified substances; providing criminal penalties; amending s. 893.135, F.S.; revising the substances that constitute the offenses of trafficking and capital trafficking in, and capital importation of, hydrocodone and oxycodone; creating the offense of trafficking in fentanyl; providing penalties and specifying minimum terms of imprisonment and fines based on the quantity involved in the offense; revising the substances that constitute the offenses of trafficking in phencyclidine and capital importation of phencyclidine; revising the substances

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that constitute trafficking in phenethylamines and capital manufacture or importation of phenethylamines; creating the offense of trafficking in synthetic cannabinoids; providing penalties and specifying minimum terms of imprisonment and fines based on the quantity involved in the offense; creating the offenses of trafficking in n-benzyl phenethylamines and capital manufacture or importation of a n-benzyl phenethylamine compound; providing penalties and specifying minimum terms of imprisonment and fines based on the quantity involved in the offense; authorizing a court to depart from a mandatory minimum sentence for drug trafficking if the court finds compelling reasons that the mandatory minimum sentence is not necessary for the protection of the public; requiring a court to submit written reasons for such departure to the Office of Economic and Demographic Research; reenacting and amending s. 921.0022, F.S.; ranking offenses on the offense severity ranking chart of the Criminal Punishment Code; incorporating the amendments made by the act in cross-references to amended provisions; amending s. 775.082, F.S.; requiring that a court sentence a defendant who is convicted of a primary offense of possession of a controlled substance committed on or after a specified date to a nonstate prison sanction under certain circumstances; defining the term "possession of a controlled substance"; amending s. 921.0026, F.S.; revising the mitigating circumstances under which a

departure from the lowest permissible sentence is reasonably justified; making technical changes; amending s. 948.01, F.S.; requiring a sentencing court to place certain defendants who commit an offense on or after a specified date into a postadjudicatory treatment-based drug court program, into residential drug treatment, or on drug offender probation; making technical changes; reenacting ss. 775.08435(1)(b) and (c), 921.002(3), and 921.00265(1), F.S., relating to the prohibition on withholding adjudication in felony cases, the Criminal Punishment Code, and recommended and departure sentences, respectively, to incorporate the amendment made to s. 921.0026, F.S., in references thereto; reenacting ss. 394.47892(2) and (4)(a), 397.334(3)(a) and (5), 910.035(5)(a), 921.187(1)(c), and 943.04352, F.S., relating to mental health court programs, treatment-based drug court programs, transfer for participation in a problem-solving court, offender probation with or without adjudication of guilt, and court placement of a defendant on misdemeanor probation, respectively, to incorporate the amendment made to s. 948.01, F.S., in references thereto; reenacting ss. 39.806(1)(d), 63.089(4)(b), 95.11(10), 775.082(1)(b) and (3)(a), (b), and (c), 775.0823(1) and (2), 921.16(1), 948.06(8)(c), 948.062(1)(a), 985.265(3)(b), 1012.315(1)(d), and 1012.467(2)(g), relating to grounds for termination of parental rights, proceedings to terminate parental rights pending adoption, limitations other than for

the recovery of real property, penalties, violent offenses committed against specified officials, when sentences are to be concurrent and when consecutive, violation of probation or community control, reviewing and reporting serious offenses committed by offenders placed on probation or community control, detention transfer and release, disqualification from employment, and noninstructional contractors who are permitted access to school grounds when students are present, respectively, to incorporate the amendments made by the act in cross-references to amended provisions; providing an effective date.

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

Section 1. Subsection (4) of section 381.887, Florida Statutes, is amended to read:

381.887 Emergency treatment for suspected opioid overdose.—

(4) The following persons ~~Emergency responders, including, but not limited to, law enforcement officers, paramedics, and emergency medical technicians,~~ are authorized to possess, store, and administer emergency opioid antagonists as clinically indicated:

(a) Emergency responders, including, but not limited to, law enforcement officers, paramedics, and emergency medical technicians.

(b) Crime laboratory personnel for the statewide criminal analysis laboratory system as described in s. 943.32, including, but not limited to, analysts, evidence intake personnel, and

their supervisors.

Section 2. Paragraph (a) of subsection (1) of section 782.04, Florida Statutes, is amended to read:

782.04 Murder.—

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

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

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

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

b. Arson,

c. Sexual battery,

d. Robbery,

e. Burglary,

f. Kidnapping,

g. Escape,

h. Aggravated child abuse,

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

j. Aircraft piracy,

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

l. Carjacking,

m. Home-invasion robbery,

n. Aggravated stalking,

o. Murder of another human being,

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

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

r. Felony that is an act of terrorism or is in furtherance

of an act of terrorism,

s. Human trafficking; or

3. Which resulted from the unlawful distribution by a person 18 years of age or older of any of the following substances, or mixture containing any of the following substances ~~substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older~~, when such substance or mixture ~~drug~~ is proven to be the proximate cause of the death of the user:

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

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

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

d. Methadone;

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

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

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

h. Sufentanil, as described in s. 893.03(2)(b)29.; or

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

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

Section 3. Section 893.015, Florida Statutes, is created to read:

893.015 Statutory references.—The purpose of this chapter is to comprehensively address drug abuse prevention and control

in this state. To this end, unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 893 or to any section or portion of a section of chapter 893 includes all subsequent amendments to chapter 893 or to the referenced section or portion of a section.

Section 4. Paragraphs (a) and (c) of subsection (1) of section 893.03, Florida Statutes, are amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific

chemical designation:

1. Acetyl-alpha-methylfentanyl.
2. Acetylmethadol.
3. Allylprodine.
4. Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
5. Alphamethadol.
6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).
7. Alpha-methylthiofentanyl.
8. Alphameprodine.
9. Benzethidine.
10. Benzylfentanyl.
11. Betacetylmethadol.
12. Beta-hydroxyfentanyl.
13. Beta-hydroxy-3-methylfentanyl.
14. Betameprodine.
15. Betamethadol.
16. Betaprodine.
17. Clonitazene.
18. Dextromoramide.
19. Diampromide.
20. Diethylthiambutene.
21. Difenoxin.
22. Dimenoxadol.
23. Dimepheptanol.
24. Dimethylthiambutene.

25. Dioxaphetyl butyrate.
26. Dipipanone.
27. Ethylmethylthiambutene.
28. Etonitazene.
29. Etoxeridine.
30. Flunitrazepam.
31. Furethidine.
32. Hydroxypethidine.
33. Ketobemidone.
34. Levomoramide.
35. Levophenacylmorphan.
36. Desmethylprodine (1-Methyl-4-Phenyl-4-Propionoxypiperidine).
37. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
38. 3-Methylthiofentanyl.
39. Morpheridine.
40. Noracymethadol.
41. Norlevorphanol.
42. Normethadone.
43. Norpipanone.
44. Para-Fluorofentanyl.
45. Phenadoxone.
46. Phenampromide.
47. Phenomorphan.
48. Phenoperidine.
49. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine).
50. Piritramide.

51. Proheptazine.
52. Properidine.
53. Propiram.
54. Racemoramide.
55. Thenylfentanyl.
56. Thiofentanyl.
57. Tilidine.
58. Trimeperidine.
59. Acetylfentanyl.
60. Butyrylfentanyl.
61. Beta-Hydroxythiofentanyl.
62. Fentanyl derivatives. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a 4-anilidopiperidine structure:
a. With or without substitution at the carbonyl of the aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl, methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl, dihydrofuranyl, benzyl moiety, or rings containing heteroatoms sulfur, oxygen, or nitrogen;
b. With or without substitution at the piperidine amino moiety with a phenethyl, benzyl, alkylaryl (including heteroaromatics), alkyltetrazolyl ring, or an alkyl or carbomethoxy group, whether or not further substituted in the ring or group;

c. With or without substitution or addition to the piperdine ring to any extent with one or more methyl, carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester groups;

d. With or without substitution of one or more hydrogen atoms for halogens, or methyl, alkyl, or methoxy groups, in the aromatic ring of the anilide moiety;

e. With or without substitution at the alpha or beta position of the piperidine ring with alkyl, hydroxyl, or methoxy groups;

f. With or without substitution of the benzene ring of the anilide moiety for an aromatic heterocycle; and

g. With or without substitution of the piperidine ring for a pyrrolidine ring, perhydroazepine ring, or azepine ring;

excluding, Alfentanil, Carfentanil, Fentanyl, and Sufentanil; including, but not limited to:

(I) Acetyl-alpha-methylfentanyl.

(II) Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

(III) Alpha-methylthiofentanyl.

(IV) Benzylfentanyl.

(V) Beta-hydroxyfentanyl.

(VI) Beta-hydroxy-3-methylfentanyl.

(VII) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).

(VIII) 3-Methylthiofentanyl.

(IX) Para-Fluorofentanyl.

(X) Thenylfentanyl or Thienyl fentanyl.

(XI) Thiofentanyl.

(XII) Acetylfentanyl.

(XIII) Butyrylfentanyl.

(XIV) Beta-Hydroxythiofentanyl.

(XV) Lofentanil.

(XVI) Ocfentanil.

(XVII) Ohmfentanyl.

(XVIII) Benzodioxolefentanyl.

(XIX) Furanyl fentanyl.

(XX) Pentanoyl fentanyl.

(XXI) Cyclopentyl fentanyl.

(XXII) Isobutyryl fentanyl.

(XXIII) Remifentanil.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of their salts, isomers, including optical, positional, or geometric isomers, homologues, nitrogen-heterocyclic analogs, esters, ethers, and salts of isomers, homologues, nitrogen-heterocyclic analogs, esters, or ethers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation or class description:

1. Alpha-Ethyltryptamine.

2. 4-Methylaminorex (2-Amino-4-methyl-5-phenyl-2-oxazoline).

3. Aminorex (2-Amino-5-phenyl-2-oxazoline).

4. DOB (4-Bromo-2,5-dimethoxyamphetamine).

5. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).
6. Bufotenine.
7. Cannabis.
8. Cathinone.
9. DET (Diethyltryptamine).
10. 2,5-Dimethoxyamphetamine.
11. DOET (4-Ethyl-2,5-Dimethoxyamphetamine).
12. DMT (Dimethyltryptamine).
13. PCE (N-Ethyl-1-phenylcyclohexylamine)(Ethylamine analog of phencyclidine).
14. JB-318 (N-Ethyl-3-piperidyl benzilate).
15. N-Ethylamphetamine.
16. Fenethylline.
17. 3,4-Methylenedioxy-N-hydroxyamphetamine.
18. Ibogaine.
19. LSD (Lysergic acid diethylamide).
20. Mescaline.
21. Methcathinone.
22. 5-Methoxy-3,4-methylenedioxyamphetamine.
23. PMA (4-Methoxyamphetamine).
24. PMMA (4-Methoxymethamphetamine).
25. DOM (4-Methyl-2,5-dimethoxyamphetamine).
26. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).
27. MDA (3,4-Methylenedioxyamphetamine).
28. JB-336 (N-Methyl-3-piperidyl benzilate).
29. N,N-Dimethylamphetamine.
30. Parahexyl.
31. Peyote.
32. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine) (Pyrrolidine

analog of phencyclidine).
33. Psilocybin.
34. Psilocyn.
35. *Salvia divinorum*, except for any drug product approved by the United States Food and Drug Administration which contains *Salvia divinorum* or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
36. Salvinorin A, except for any drug product approved by the United States Food and Drug Administration which contains Salvinorin A or its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation.
37. Xylazine.
38. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine) (Thiophene analog of phencyclidine).
39. 3,4,5-Trimethoxyamphetamine.
40. Methylone (3,4-Methylenedioxymethcathinone).
41. MDPV (3,4-Methylenedioxypyrovalerone).
42. Methylmethcathinone.
43. Methoxymethcathinone.
44. Fluoromethcathinone.
45. Methylethcathinone.
46. CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol) and its dimethyloctyl (C8) homologue.
47. HU-210 [(6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol].

48. JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).
49. JWH-073 (1-Butyl-3-(1-naphthoyl)indole).
50. JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole).
51. BZP (Benzylpiperazine).
52. Fluorophenylpiperazine.
53. Methylphenylpiperazine.
54. Chlorophenylpiperazine.
55. Methoxyphenylpiperazine.
56. DBZP (1,4-Dibenzylpiperazine).
57. TFMPP (Trifluoromethylphenylpiperazine).
58. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).
59. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).
60. 5-Hydroxy-N-methyltryptamine.
61. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).
62. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).
63. Methyltryptamine.
64. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).
65. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).
66. Tyramine (4-Hydroxyphenethylamine).
67. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).
68. DiPT (N,N-Diisopropyltryptamine).
69. DPT (N,N-Dipropyltryptamine).
70. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).
71. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).
72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).

75. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).
76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
77. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).
78. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).
79. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).
80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
81. Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone).
82. Ethcathinone.
83. Ethylone (3,4-Methylenedioxy-N-ethylcathinone).
84. Naphyrone (Naphthylpyrovalerone).
85. Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).
86. 3,4-Methylenedioxy-N,N-diethylcathinone.
87. 3,4-Methylenedioxy-propiophenone.
88. 3,4-Methylenedioxy-alpha-bromopropiophenone.
89. 3,4-Methylenedioxy-propiophenone-2-oxime.
90. 3,4-Methylenedioxy-N-acetylcathinone.
91. 3,4-Methylenedioxy-N-acetylmethcathinone.
92. 3,4-Methylenedioxy-N-acetylethcathinone.
93. Bromomethcathinone.
94. Buphedrone (alpha-Methylamino-butyrophenone).
95. Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone).
96. Dimethylcathinone.
97. Dimethylmethcathinone.
98. Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone).
99. MDPPP (3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone).

100. MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone).
101. MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).
102. MPHP (Methyl-alpha-pyrrolidinohexanophenone).
103. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine).
104. F-MABP (Fluoromethylaminobutyrophenone).
105. MeO-PBP (Methoxypyrrolidinobutyrophenone).
106. Et-PBP (Ethylpyrrolidinobutyrophenone).
107. 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).
108. Me-EABP (Methylethylaminobutyrophenone).
109. Etizolam.
110. PPP (Pyrrolidinopropiophenone).
111. PBP (Pyrrolidinobutyrophenone).
112. PVP (Pyrrolidinovalerophenone) or (Pyrrolidinopentiophenone).
113. MPPP (Methyl-alpha-pyrrolidinopropiophenone).
114. JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).
115. JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).
116. JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).
117. JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).
118. JWH-072 (1-Propyl-3-(1-naphthoyl)indole).
119. JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).
120. JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).
121. JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).
122. JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).
123. JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).
124. JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).

125. JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).
126. JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).
127. JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).
128. JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).
129. JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).
130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).
131. HU-308 ([(1R,2R,5R)-2-[2,6-Dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol).
132. HU-331 (3-Hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione).
133. CB-13 (4-Pentyloxy-1-(1-naphthoyl)naphthalene).
134. CB-25 (N-Cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-undecanamide).
135. CB-52 (N-Cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-undecanamide).
136. CP 55,940 (2-[3-Hydroxy-6-propanol-cyclohexyl]-5-(2-methyloctan-2-yl)phenol).
137. AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).
138. AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).
139. RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).
140. RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).
141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone).

143. Pentedrone (alpha-Methylaminovalerophenone).

144. Fluoroamphetamine.

145. Fluoromethamphetamine.

146. Methoxetamine.

147. Methiopropamine.

148. Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone).

149. APB ((2-Aminopropyl)benzofuran).

150. APDB ((2-Aminopropyl)-2,3-dihydrobenzofuran).

151. UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

152. XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

153. Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

154. AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

155. AM-2233(1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole).

156. STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide).

157. URB-597 ((3'-(Aminocarbonyl)[1,1'-biphenyl]-3-yl)-cyclohexylcarbamate).

158. URB-602 ([1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester).

159. URB-754 (6-Methyl-2-[(4-methylphenyl)amino]-1-benzoxazin-4-one).

160. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).

161. 2C-H (2,5-Dimethoxyphenethylamine).

162. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).

163. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

164. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

165. MDMA (3,4-Methylenedioxymethamphetamine).

166. PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate).

167. Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate).

168. BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate).

169. Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

174. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

175. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

176. AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

177. FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-

carboxylate).

178. Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide).

179. Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

180. THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).

181. AM-855 ((4aR,12bR)-8-Hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol).

182. AM-905 ((6aR,9R,10aR)-3-[(E)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

183. AM-906 ((6aR,9R,10aR)-3-[(Z)-Hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol).

184. AM-2389 ((6aR,9R,10aR)-3-(1-Hexyl-cyclobut-1-yl)-6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9 diol).

185. HU-243 ((6aR,8S,9S,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-tetrahydro-6aH-benzo[c]chromen-1-ol).

186. HU-336 ((6aR,10aR)-6,6,9-Trimethyl-3-pentyl-6a,7,10,10a-tetrahydro-1H-benzo[c]chromene-1,4(6H)-dione).

187. MAPB ((2-Methylaminopropyl)benzofuran).

188. 5-IT (2-(1H-Indol-5-yl)-1-methyl-ethylamine).

189. 6-IT (2-(1H-Indol-6-yl)-1-methyl-ethylamine).

190. Synthetic Cannabinoids.—Unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or

preparation that contains any quantity of a synthetic cannabinoid found to be in any of the following chemical class descriptions, or homologues, nitrogen-heterocyclic analogs, isomers (including optical, positional, or geometric), esters, ethers, salts, and salts of homologues, nitrogen-heterocyclic analogs, isomers, esters, or ethers, whenever the existence of such homologues, nitrogen-heterocyclic analogs, isomers, esters, ethers, salts, and salts of isomers, esters, or ethers is possible within the specific chemical class or designation. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or the compounds of these structures shall be included under this subparagraph, regardless of their specific numerical designation of atomic positions covered, if it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

a. Tetrahydrocannabinols.—Any tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis*, the synthetic equivalents of the substances contained in the plant or in the resinous extracts of the genus *Cannabis*, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, including, but not limited to, Delta 9 tetrahydrocannabinols and their optical isomers, Delta 8 tetrahydrocannabinols and their optical isomers, Delta 6a,10a tetrahydrocannabinols and their optical isomers, or any compound containing a tetrahydrobenzo[c]chromene structure with substitution at either or both the 3-position or 9-position, with or without substitution at the 1-position with

hydroxyl or alkoxy groups, including, but not limited to:

(I) Tetrahydrocannabinol.

(II) HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(III) HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IV) JWH-051 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(V) JWH-133 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VI) JWH-057 ((6aR,10aR)-6,6,9-Trimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VII) JWH-359 ((6aR,10aR)-1-Methoxy-6,6,9-trimethyl-3-(2,3-dimethylpentan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromene).

(VIII) AM-087 ((6aR,10aR)-3-(2-Methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(IX) AM-411 ((6aR,10aR)-3-(1-Adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).

(X) Parahexyl.

b. Naphthoylindoles, Naphthoylindazoles, Naphthoylcarbazoles, Naphthylmethylindoles, Naphthylmethylindazoles, and Naphthylmethylcarbazoles.—Any compound containing a naphthoylindole, naphthoylindazole, naphthoylcarbazole, naphthylmethylindole, naphthylmethylindazole, or naphthylmethylcarbazole structure, with or without substitution on the indole, indazole, or carbazole ring to any extent, whether or not substituted on the

naphthyl ring to any extent, including, but not limited to:

(I) JWH-007 (1-Pentyl-2-methyl-3-(1-naphthoyl)indole).

(II) JWH-011 (1-(1-Methylhexyl)-2-methyl-3-(1-naphthoyl)indole).

(III) JWH-015 (1-Propyl-2-methyl-3-(1-naphthoyl)indole).

(IV) JWH-016 (1-Butyl-2-methyl-3-(1-naphthoyl)indole).

(V) JWH-018 (1-Pentyl-3-(1-naphthoyl)indole).

(VI) JWH-019 (1-Hexyl-3-(1-naphthoyl)indole).

(VII) JWH-020 (1-Heptyl-3-(1-naphthoyl)indole).

(VIII) JWH-022 (1-(4-Pentenyl)-3-(1-naphthoyl)indole).

(IX) JWH-071 (1-Ethyl-3-(1-naphthoyl)indole).

(X) JWH-072 (1-Propyl-3-(1-naphthoyl)indole).

(XI) JWH-073 (1-Butyl-3-(1-naphthoyl)indole).

(XII) JWH-080 (1-Butyl-3-(4-methoxy-1-naphthoyl)indole).

(XIII) JWH-081 (1-Pentyl-3-(4-methoxy-1-naphthoyl)indole).

(XIV) JWH-098 (1-Pentyl-2-methyl-3-(4-methoxy-1-naphthoyl)indole).

(XV) JWH-116 (1-Pentyl-2-ethyl-3-(1-naphthoyl)indole).

(XVI) JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole).

(XVII) JWH-149 (1-Pentyl-2-methyl-3-(4-methyl-1-naphthoyl)indole).

(XVIII) JWH-164 (1-Pentyl-3-(7-methoxy-1-naphthoyl)indole).

(XIX) JWH-175 (1-Pentyl-3-(1-naphthylmethyl)indole).

(XX) JWH-180 (1-Propyl-3-(4-propyl-1-naphthoyl)indole).

(XXI) JWH-182 (1-Pentyl-3-(4-propyl-1-naphthoyl)indole).

(XXII) JWH-184 (1-Pentyl-3-[(4-methyl)-1-naphthylmethyl]indole).

(XXIII) JWH-193 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methyl-1-naphthoyl)indole).

(XXIV) JWH-198 (1-[2-(4-Morpholinyl)ethyl]-3-(4-methoxy-1-naphthoyl)indole).

(XXV) JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole).

(XXVI) JWH-210 (1-Pentyl-3-(4-ethyl-1-naphthoyl)indole).

(XXVII) JWH-387 (1-Pentyl-3-(4-bromo-1-naphthoyl)indole).

(XXVIII) JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole).

(XXIX) JWH-412 (1-Pentyl-3-(4-fluoro-1-naphthoyl)indole).

(XXX) JWH-424 (1-Pentyl-3-(8-bromo-1-naphthoyl)indole).

(XXXI) AM-1220 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(1-naphthoyl)indole).

(XXXII) AM-1235 (1-(5-Fluoropentyl)-6-nitro-3-(1-naphthoyl)indole).

(XXXIII) AM-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole).

(XXXIV) Chloro JWH-018 (1-(Chloropentyl)-3-(1-naphthoyl)indole).

(XXXV) Bromo JWH-018 (1-(Bromopentyl)-3-(1-naphthoyl)indole).

(XXXVI) AM-2232 (1-(4-Cyanobutyl)-3-(1-naphthoyl)indole).

(XXXVII) THJ-2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indazole).

(XXXVIII) MAM-2201 (1-(5-Fluoropentyl)-3-(4-methyl-1-naphthoyl)indole).

(XXXIX) EAM-2201 (1-(5-Fluoropentyl)-3-(4-ethyl-1-naphthoyl)indole).

(XL) EG-018 (9-Pentyl-3-(1-naphthoyl)carbazole).

(XLI) EG-2201 (9-(5-Fluoropentyl)-3-(1-naphthoyl)carbazole).

c. Naphthoylpyrroles.—Any compound containing a naphthoylpyrrole structure, with or without substitution on the pyrrole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) JWH-030 (1-Pentyl-3-(1-naphthoyl)pyrrole).

(II) JWH-031 (1-Hexyl-3-(1-naphthoyl)pyrrole).

(III) JWH-145 (1-Pentyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(IV) JWH-146 (1-Heptyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(V) JWH-147 (1-Hexyl-5-phenyl-3-(1-naphthoyl)pyrrole).

(VI) JWH-307 (1-Pentyl-5-(2-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(VII) JWH-309 (1-Pentyl-5-(1-naphthalenyl)-3-(1-naphthoyl)pyrrole).

(VIII) JWH-368 (1-Pentyl-5-(3-fluorophenyl)-3-(1-naphthoyl)pyrrole).

(IX) JWH-369 (1-Pentyl-5-(2-chlorophenyl)-3-(1-naphthoyl)pyrrole).

(X) JWH-370 (1-Pentyl-5-(2-methylphenyl)-3-(1-naphthoyl)pyrrole).

d. Naphthylmethylenindenes.—Any compound containing a naphthylmethylenindene structure, with or without substitution at the 3-position of the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to, JWH-176 (3-Pentyl-1-(naphthylmethylene)indene).

e. Phenylacetylindoles and Phenylacetylindazoles.—Any compound containing a phenylacetylindole or phenylacetylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the

phenyl ring to any extent, including, but not limited to:

(I) JWH-167 (1-Pentyl-3-(phenylacetyl)indole).

(II) JWH-201 (1-Pentyl-3-(4-methoxyphenylacetyl)indole).

(III) JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole).

(IV) JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole).

(V) JWH-251 (1-Pentyl-3-(2-methylphenylacetyl)indole).

(VI) JWH-302 (1-Pentyl-3-(3-methoxyphenylacetyl)indole).

(VII) Cannabipiperidiethanone.

(VIII) RCS-8 (1-(2-Cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole).

f. Cyclohexylphenols.—Any compound containing a cyclohexylphenol structure, with or without substitution at the 5-position of the phenolic ring to any extent, whether or not substituted on the cyclohexyl ring to any extent, including, but not limited to:

(I) CP 47,497 (2-(3-Hydroxycyclohexyl)-5-(2-methyloctan-2-yl)phenol).

(II) Cannabicyclohexanol (CP 47,497 dimethyloctyl (C8) homologue).

(III) CP-55,940 (2-(3-Hydroxy-6-propanol-cyclohexyl)-5-(2-methyloctan-2-yl)phenol).

g. Benzoylindoles and Benzoylindazoles.—Any compound containing a benzoylindole or benzoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the phenyl ring to any extent, including, but not limited to:

(I) AM-679 (1-Pentyl-3-(2-iodobenzoyl)indole).

(II) AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole).

(III) AM-1241 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-

iodo-5-nitrobenzoyl)indole).

(IV) Pravadoline (1-[2-(4-Morpholinyl)ethyl]-2-methyl-3-(4-methoxybenzoyl)indole).

(V) AM-2233 (1-[(N-Methyl-2-piperidinyl)methyl]-3-(2-iodobenzoyl)indole).

(VI) RCS-4 (1-Pentyl-3-(4-methoxybenzoyl)indole).

(VII) RCS-4 C4 homologue (1-Butyl-3-(4-methoxybenzoyl)indole).

(VIII) AM-630 (1-[2-(4-Morpholinyl)ethyl]-2-methyl-6-iodo-3-(4-methoxybenzoyl)indole).

h. Tetramethylcyclopropanoylindoles and Tetramethylcyclopropanoylindazoles.—Any compound containing a tetramethylcyclopropanoylindole or tetramethylcyclopropanoylindazole structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the tetramethylcyclopropyl group to any extent, including, but not limited to:

(I) UR-144 (1-Pentyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(II) XLR11 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(III) Chloro UR-144 (1-(Chloropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(IV) A-796,260 (1-[2-(4-Morpholinyl)ethyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(V) A-834,735 (1-[4-(Tetrahydropyranyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VI) M-144 (1-(5-Fluoropentyl)-2-methyl-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VII) FUB-144 (1-(4-Fluorobenzyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(VIII) FAB-144 (1-(5-Fluoropentyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indazole).

(IX) XLR12 (1-(4,4,4-Trifluorobutyl)-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

(X) AB-005 (1-[(1-Methyl-2-piperidinyl)methyl]-3-(2,2,3,3-tetramethylcyclopropanoyl)indole).

i. Adamantoylindoles, Adamantoylindazoles, Adamantylindole carboxamides, and Adamantylindazole carboxamides.—Any compound containing an adamantoyl indole, adamantoyl indazole, adamantyl indole carboxamide, or adamantyl indazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the adamantyl ring to any extent, including, but not limited to:

(I) AKB48 (N-Adamant-1-yl 1-pentylindazole-3-carboxamide).

(II) Fluoro AKB48 (N-Adamant-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

(III) STS-135 (N-Adamant-1-yl 1-(5-fluoropentyl)indole-3-carboxamide).

(IV) AM-1248 (1-(1-Methylpiperidine)methyl-3-(1-adamantoyl)indole).

(V) AB-001 (1-Pentyl-3-(1-adamantoyl)indole).

(VI) APICA (N-Adamant-1-yl 1-pentylindole-3-carboxamide).

(VII) Fluoro AB-001 (1-(Fluoropentyl)-3-(1-adamantoyl)indole).

j. Quinolinylindolecarboxylates, Quinolinylindazolecarboxylates, Quinolinylindolecarboxamides, and Quinolinylindazolecarboxamides.—Any compound containing a

quinolinylindole carboxylate, quinolinylindazole carboxylate, isoquinolinylindole carboxylate, isoquinolinylindazole carboxylate, quinolinylindole carboxamide, quinolinylindazole carboxamide, isoquinolinylindole carboxamide, or isoquinolinylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the quinoline or isoquinoline ring to any extent, including, but not limited to:

(I) PB-22 (8-Quinolinyl 1-pentylindole-3-carboxylate).

(II) Fluoro PB-22 (8-Quinolinyl 1-(fluoropentyl)indole-3-carboxylate).

(III) BB-22 (8-Quinolinyl 1-(cyclohexylmethyl)indole-3-carboxylate).

(IV) FUB-PB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) NPB-22 (8-Quinolinyl 1-pentylindazole-3-carboxylate).

(VI) Fluoro NPB-22 (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxylate).

(VII) FUB-NPB-22 (8-Quinolinyl 1-(4-fluorobenzyl)indazole-3-carboxylate).

(VIII) THJ (8-Quinolinyl 1-pentylindazole-3-carboxamide).

(IX) Fluoro THJ (8-Quinolinyl 1-(fluoropentyl)indazole-3-carboxamide).

k. Naphthylindolecarboxylates and Naphthylindazolecarboxylates.—Any compound containing a naphthylindole carboxylate or naphthylindazole carboxylate structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) NM-2201 (1-Naphthalenyl 1-(5-fluoropentyl)indole-3-carboxylate).

(II) SDB-005 (1-Naphthalenyl 1-pentylindazole-3-carboxylate).

(III) Fluoro SDB-005 (1-Naphthalenyl 1-(fluoropentyl)indazole-3-carboxylate).

(IV) FDU-PB-22 (1-Naphthalenyl 1-(4-fluorobenzyl)indole-3-carboxylate).

(V) 3-CAF (2-Naphthalenyl 1-(2-fluorophenyl)indazole-3-carboxylate).

l. Naphthylindole carboxamides and Naphthylindazole carboxamides.—Any compound containing a naphthylindole carboxamide or naphthylindazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the naphthyl ring to any extent, including, but not limited to:

(I) NNEI (N-Naphthalen-1-yl 1-pentylindole-3-carboxamide).

(II) Fluoro-NNEI (N-Naphthalen-1-yl 1-(fluoropentyl)indole-3-carboxamide).

(III) Chloro-NNEI (N-Naphthalen-1-yl 1-(chloropentyl)indole-3-carboxamide).

(IV) MN-18 (N-Naphthalen-1-yl 1-pentylindazole-3-carboxamide).

(V) Fluoro MN-18 (N-Naphthalen-1-yl 1-(fluoropentyl)indazole-3-carboxamide).

m. Alkylcarbonyl indole carboxamides, Alkylcarbonyl indazole carboxamides, Alkylcarbonyl indole carboxylates, and Alkylcarbonyl indazole carboxylates.—Any compound containing an alkylcarbonyl group, including 1-amino-3-methyl-1-oxobutan-2-yl,

1-methoxy-3-methyl-1-oxobutan-2-yl, 1-amino-1-oxo-3-phenylpropan-2-yl, 1-methoxy-1-oxo-3-phenylpropan-2-yl, with an indole carboxamide, indazole carboxamide, indole carboxylate, or indazole carboxylate, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the alkylcarbonyl group to any extent, including, but not limited to:

(I) ADBICA, (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindole-3-carboxamide).

(II) Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(III) Fluoro ABICA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

(IV) AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(V) Fluoro AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VI) ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(VII) Fluoro ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(VIII) AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(IX) ADB-FUBINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(X) AB-CHMINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XI) MA-CHMINACA (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XII) MAB-CHMINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XIII) AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-pentylindazole-3-carboxamide).

(XIV) Fluoro-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(fluoropentyl)indazole-3-carboxamide).

(XV) FUB-AMB (N-(1-Methoxy-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVI) MDMB-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XVII) MDMB-FUBINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XVIII) MDMB-CHMICA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indole-3-carboxamide).

(XIX) PX-1 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indole-3-carboxamide).

(XX) PX-2 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide).

(XXI) PX-3 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide).

(XXII) PX-4 (N-(1-Amino-1-oxo-3-phenylpropan-2-yl)-1-(4-fluorobenzyl)indazole-3-carboxamide).

(XXIII) MO-CHMINACA (N-(1-Methoxy-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxylate).

n. Cumylindolecarboxamides and Cumylindazolecarboxamides.—Any compound containing a N-(2-phenylpropan-2-yl) indole carboxamide or N-(2-phenylpropan-2-yl) indazole carboxamide structure, with or without substitution on the indole or indazole ring to any extent, whether or not substituted on the

phenyl ring of the cumyl group to any extent, including, but not limited to:

(I) CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-pentylindole-3-carboxamide).

(II) Fluoro CUMYL-PICA (N-(2-Phenylpropan-2-yl)-1-(fluoropentyl)indole-3-carboxamide).

o. Other Synthetic Cannabinoids.—Any material, compound, mixture, or preparation that contains any quantity of a Synthetic Cannabinoid, as described in sub-subparagraphs a.-n.:

(I) With or without modification or replacement of a carbonyl, carboxamide, alkylene, alkyl, or carboxylate linkage between either two core rings, or linkage between a core ring and group structure, with or without the addition of a carbon or replacement of a carbon;

(II) With or without replacement of a core ring or group structure, whether or not substituted on the ring or group structures to any extent; and

(III) Is a cannabinoid receptor agonist, unless specifically excepted or unless listed in another schedule or contained within a pharmaceutical product approved by the United States Food and Drug Administration.

191. Substituted Cathinones.—Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations:

a. Any compound containing a 2-amino-1-phenyl-1-propanone structure;

b. Any compound containing a 2-amino-1-naphthyl-1-propanone structure; or

c. Any compound containing a 2-amino-1-thiophenyl-1-propanone structure,

whether or not the compound is further modified:

(I) With or without substitution on the ring system to any extent with alkyl, alkylthio, thio, fused alkylenedioxy, alkoxy, haloalkyl, hydroxyl, nitro, fused furan, fused benzofuran, fused dihydrofuran, fused tetrahydropyran, fused alkyl ring, or halide substituents;

(II) With or without substitution at the 3-propanone position with an alkyl substituent or removal of the methyl group at the 3-propanone position;

(III) With or without substitution at the 2-amino nitrogen atom with alkyl, dialkyl, acetyl, or benzyl groups, whether or not further substituted in the ring system; or

(IV) With or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:

(A) Methcathinone.

(B) Ethcathinone.

(C) Methylone (3,4-Methylenedioxymethcathinone).

(D) 2,3-Methylenedioxymethcathinone.

(E) MDPV (3,4-Methylenedioxypyrovalerone).

(F) Methylmethcathinone.

(G) Methoxymethcathinone.

(H) Fluoromethcathinone.

(I) Methylethcathinone.

(J) Butylone (3,4-Methylenedioxy-alpha-methylaminobutyrophenone).

(K) Ethylone (3,4-Methylenedioxy-N-ethylcathinone).

(L) BMDP (3,4-Methylenedioxy-N-benzylcathinone).

(M) Naphyrone (Naphthylpyrovalerone).

(N) Bromomethcathinone.

(O) Buphedrone (alpha-Methylaminobutyrophenone).

(P) Eutylone (3,4-Methylenedioxy-alpha-ethylaminobutyrophenone).

(Q) Dimethylcathinone.

(R) Dimethylmethcathinone.

(S) Pentylone (3,4-Methylenedioxy-alpha-methylaminovalerophenone).

(T) Pentedrone (alpha-Methylaminovalerophenone).

(U) MDPPP (3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone).

(V) MDPBP (3,4-Methylenedioxy-alpha-pyrrolidinobutyrophenone).

(W) MPPP (Methyl-alpha-pyrrolidinopropiophenone).

(X) PPP (Pyrrolidinopropiophenone).

(Y) PVP (Pyrrolidinovalerophenone) or (Pyrrolidinopentiophenone).

(Z) MOPPP (Methoxy-alpha-pyrrolidinopropiophenone).

(AA) MPHP (Methyl-alpha-pyrrolidinohexanophenone).

(BB) F-MABP (Fluoromethylaminobutyrophenone).

(CC) Me-EABP (Methylethylaminobutyrophenone).

(DD) PBP (Pyrrolidinobutyrophenone).

(EE) MeO-PBP (Methoxypyrrolidinobutyrophenone).

(FF) Et-PBP (Ethylpyrrolidinobutyrophenone).

(GG) 3-Me-4-MeO-MCAT (3-Methyl-4-Methoxymethcathinone).

(HH) Dimethylone (3,4-Methylenedioxy-N,N-dimethylcathinone).

(II) 3,4-Methylenedioxy-N,N-diethylcathinone.

(JJ) 3,4-Methylenedioxy-N-acetylcathinone.

(KK) 3,4-Methylenedioxy-N-acetylmethcathinone.

(LL) 3,4-Methylenedioxy-N-acetylethcathinone.

(MM) Methylbuphedrone (Methyl-alpha-methylaminobutyrophenone).

(NN) Methyl-alpha-methylaminohexanophenone.

(OO) N-Ethyl-N-methylcathinone.

(PP) PHP (Pyrrolidinohexanophenone).

(QQ) PV8 (Pyrrolidinoheptanophenone).

(RR) Chloromethcathinone.

(SS) 4-Bromo-2,5-dimethoxy-alpha-aminoacetophenone.

192. Substituted Phenethylamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure, without a beta-keto group, and without a benzyl group attached to the amine group, whether or not the compound is further modified with or without substitution on the phenyl ring to any extent with alkyl, alkylthio, nitro, alkoxy, thio, halide, fused alkylenedioxy, fused furan, fused benzofuran, fused dihydrofuran, or fused tetrahydropyran substituents,

whether or not further substituted on a ring to any extent, with or without substitution at the alpha or beta position by any alkyl substituent, with or without substitution at the nitrogen atom, and with or without inclusion of the 2-amino nitrogen atom in a cyclic structure, including, but not limited to:

a. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine).

b. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).

c. 2C-T-4 (4-Isopropylthio-2,5-dimethoxyphenethylamine).

d. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).

e. 2C-T (4-Methylthio-2,5-dimethoxyphenethylamine).

f. 2C-T-2 (4-Ethylthio-2,5-dimethoxyphenethylamine).

g. 2C-T-7 (4-(n)-Propylthio-2,5-dimethoxyphenethylamine).

h. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).

i. 2C-D (4-Methyl-2,5-dimethoxyphenethylamine).

j. 2C-H (2,5-Dimethoxyphenethylamine).

k. 2C-N (4-Nitro-2,5-dimethoxyphenethylamine).

l. 2C-P (4-(n)-Propyl-2,5-dimethoxyphenethylamine).

m. MDMA (3,4-Methylenedioxymethamphetamine).

n. MBDB (Methylbenzodioxolylbutanamine) or (3,4-Methylenedioxy-N-methylbutanamine).

o. MDA (3,4-Methylenedioxyamphetamine).

p. 2,5-Dimethoxyamphetamine.

q. Fluoroamphetamine.

r. Fluoromethamphetamine.

s. MDEA (3,4-Methylenedioxy-N-ethylamphetamine).

t. DOB (4-Bromo-2,5-dimethoxyamphetamine).

u. DOC (4-Chloro-2,5-dimethoxyamphetamine).

v. DOET (4-Ethyl-2,5-dimethoxyamphetamine).

w. DOI (4-Iodo-2,5-dimethoxyamphetamine).

x. DOM (4-Methyl-2,5-dimethoxyamphetamine).
y. PMA (4-Methoxyamphetamine).
z. N-Ethylamphetamine.
aa. 3,4-Methylenedioxy-N-hydroxyamphetamine.
bb. 5-Methoxy-3,4-methylenedioxyamphetamine.
cc. PMMA (4-Methoxymethamphetamine).
dd. N,N-Dimethylamphetamine.
ee. 3,4,5-Trimethoxyamphetamine.
ff. 4-APB (4-(2-Aminopropyl)benzofuran).
gg. 5-APB (5-(2-Aminopropyl)benzofuran).
hh. 6-APB (6-(2-Aminopropyl)benzofuran).
ii. 7-APB (7-(2-Aminopropyl)benzofuran).
jj. 4-APDB (4-(2-Aminopropyl)-2,3-dihydrobenzofuran).
kk. 5-APDB (5-(2-Aminopropyl)-2,3-dihydrobenzofuran).
ll. 6-APDB (6-(2-Aminopropyl)-2,3-dihydrobenzofuran).
mm. 7-APDB (7-(2-Aminopropyl)-2,3-dihydrobenzofuran).
nn. 4-MAPB (4-(2-Methylaminopropyl)benzofuran).
oo. 5-MAPB (5-(2-Methylaminopropyl)benzofuran).
pp. 6-MAPB (6-(2-Methylaminopropyl)benzofuran).
qq. 7-MAPB (7-(2-Methylaminopropyl)benzofuran).
rr. 5-EAPB (5-(2-Ethylaminopropyl)benzofuran).
ss. 5-MAPDB (5-(2-Methylaminopropyl)-2,3-dihydrobenzofuran),

which does not include phenethylamine, mescaline as described in subparagraph 20., substituted cathinones as described in subparagraph 191., N-Benzyl phenethylamine compounds as described in subparagraph 193., or methamphetamine as described in subparagraph (2)(c)4.

193. N-Benzyl Phenethylamine Compounds.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations, any compound containing a phenethylamine structure without a beta-keto group, with substitution on the nitrogen atom of the amino group with a benzyl substituent, with or without substitution on the phenyl or benzyl ring to any extent with alkyl, alkoxy, thio, alkylthio, halide, fused alkylenedioxy, fused furan, fused benzofuran, or fused tetrahydropyran substituents, whether or not further substituted on a ring to any extent, with or without substitution at the alpha position by any alkyl substituent, including, but not limited to:
a. 25B-NBOMe (4-Bromo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).
b. 25B-NBOH (4-Bromo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).
c. 25B-NBF (4-Bromo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).
d. 25B-NBMD (4-Bromo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).
e. 25I-NBOMe (4-Iodo-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).
f. 25I-NBOH (4-Iodo-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

g. 25I-NBF (4-Iodo-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

h. 25I-NBMD (4-Iodo-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

i. 25T2-NBOMe (4-Methylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

j. 25T4-NBOMe (4-Isopropylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

k. 25T7-NBOMe (4-(n)-Propylthio-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

l. 25C-NBOMe (4-Chloro-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

m. 25C-NBOH (4-Chloro-2,5-dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

n. 25C-NBF (4-Chloro-2,5-dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

o. 25C-NBMD (4-Chloro-2,5-dimethoxy-[N-(2,3-methylenedioxybenzyl)]phenethylamine).

p. 25H-NBOMe (2,5-Dimethoxy-[N-(2-methoxybenzyl)]phenethylamine).

q. 25H-NBOH (2,5-Dimethoxy-[N-(2-hydroxybenzyl)]phenethylamine).

r. 25H-NBF (2,5-Dimethoxy-[N-(2-fluorobenzyl)]phenethylamine).

s. 25D-NBOMe (4-Methyl-2,5-dimethoxy-[N-(2-methoxybenzyl)]phenethylamine),

which does not include substituted cathinones as described in subparagraph 191.

194. Substituted Tryptamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation containing a 2-(1H-indol-3-yl)ethanamine, for example tryptamine, structure with or without mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups, or by inclusion of the amino nitrogen atom in a cyclic structure, whether or not substituted at the alpha position with an alkyl group, whether or not substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, including, but not limited to:

a. Alpha-Ethyltryptamine.

b. Bufotenine.

c. DET (Diethyltryptamine).

d. DMT (Dimethyltryptamine).

e. MET (N-Methyl-N-ethyltryptamine).

f. DALT (N,N-Diallyltryptamine).

g. EiPT (N-Ethyl-N-isopropyltryptamine).

h. MiPT (N-Methyl-N-isopropyltryptamine).

i. 5-Hydroxy-AMT (5-Hydroxy-alpha-methyltryptamine).

j. 5-Hydroxy-N-methyltryptamine.

k. 5-MeO-MiPT (5-Methoxy-N-methyl-N-isopropyltryptamine).

l. 5-MeO-AMT (5-Methoxy-alpha-methyltryptamine).

m. Methyltryptamine.

n. 5-MeO-DMT (5-Methoxy-N,N-dimethyltryptamine).

o. 5-Me-DMT (5-Methyl-N,N-dimethyltryptamine).

p. 5-MeO-DiPT (5-Methoxy-N,N-Diisopropyltryptamine).

q. DiPT (N,N-Diisopropyltryptamine).

r. DPT (N,N-Dipropyltryptamine).

s. 4-Hydroxy-DiPT (4-Hydroxy-N,N-diisopropyltryptamine).

t. 5-MeO-DALT (5-Methoxy-N,N-Diallyltryptamine).

u. 4-AcO-DMT (4-Acetoxy-N,N-dimethyltryptamine).

v. 4-AcO-DiPT (4-Acetoxy-N,N-diisopropyltryptamine).

w. 4-Hydroxy-DET (4-Hydroxy-N,N-diethyltryptamine).

x. 4-Hydroxy-MET (4-Hydroxy-N-methyl-N-ethyltryptamine).

y. 4-Hydroxy-MiPT (4-Hydroxy-N-methyl-N-isopropyltryptamine).

z. Methyl-alpha-ethyltryptamine.

aa. Bromo-DALT (Bromo-N,N-diallyltryptamine),

which does not include tryptamine, psilocyn as described in subparagraph 34., or psilocybin as described in subparagraph 33.

195. Substituted Phenylcyclohexylamines.—Unless specifically excepted or unless listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation containing a phenylcyclohexylamine structure, with or without any substitution on the phenyl ring, any substitution on the cyclohexyl ring, any replacement of the phenyl ring with a thiophenyl or benzothiophenyl ring, with or without substitution on the amine with alkyl, dialkyl, or alkoxy substituents, inclusion of the nitrogen in a cyclic structure, or any combination of the above, including, but not limited to:

a. BTCP (Benzothiophenylcyclohexylpiperidine) or BCP (Benocyclidine).

b. PCE (N-Ethyl-1-phenylcyclohexylamine)(Ethylamine analog of phencyclidine).

c. PCPY (N-(1-Phenylcyclohexyl)-pyrrolidine)(Pyrrolidine analog of phencyclidine).

d. PCPr (Phenylcyclohexylpropylamine).

e. TCP (1-[1-(2-Thienyl)-cyclohexyl]-piperidine)(Thiophene analog of phencyclidine).

f. PCEEA (Phenylcyclohexyl(ethoxyethylamine)).

g. PCMPA (Phenylcyclohexyl(methoxypropylamine)).

h. Methoxetamine.

i. 3-Methoxy-PCE ((3-Methoxyphenyl)cyclohexylethylamine).

j. Bromo-PCP ((Bromophenyl)cyclohexylpiperidine).

k. Chloro-PCP ((Chlorophenyl)cyclohexylpiperidine).

l. Fluoro-PCP ((Fluorophenyl)cyclohexylpiperidine).

m. Hydroxy-PCP ((Hydroxyphenyl)cyclohexylpiperidine).

n. Methoxy-PCP ((Methoxyphenyl)cyclohexylpiperidine).

o. Methyl-PCP ((Methylphenyl)cyclohexylpiperidine).

p. Nitro-PCP ((Nitrophenyl)cyclohexylpiperidine).

q. Oxo-PCP ((Oxophenyl)cyclohexylpiperidine).

r. Amino-PCP ((Aminophenyl)cyclohexylpiperidine).

196. W-15, 4-chloro-N-[1-(2-phenylethyl)-2-piperidinylidene]-benzenesulfonamide.

197. W-18, 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-piperidinylidene]-benzenesulfonamide.

198. AH-7921, 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]-benzamide.

199. U47700, trans-3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide.

200. MT-45, 1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine, dihydrochloride.

Section 5. Paragraph (c) of subsection (6) of section

893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(6)

(c) Except as provided in this chapter, a person may not possess more than 10 grams of any substance named or described in s. 893.03(1)(a), ~~or~~ (1)(b), or (2)(b), or any combination thereof, or any mixture containing any such substance. A person who violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Paragraphs (c), (d), and (k) of subsection (1) of section 893.135, Florida Statutes, are amended, and paragraphs (m) and (n) are added to that subsection, and a new subsection (8) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the

quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.j., codeine, as described in s. 893.03(2)(a)1.g., or any salt~~, derivative, isomer, or salt of an isomer~~ thereof, or 14 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of

imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 200 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.o., or any salt~~,~~ ~~derivative, isomer, or salt of an isomer~~ thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of $750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

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

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

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

(IV) Sufentanil, as described in s. 893.03(2)(b)29.;

(V) A fentanyl derivative, as described in s. 893.03(1)(a)62.;

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs (I)-(V); or

(VII) A mixture containing any substance described in sub-sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as "trafficking in fentanyl," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and shall be ordered to pay a fine of $50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and shall be ordered to pay a fine of $100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of $500,000.

5.~~4.~~ A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6.~~5.~~ A person who knowingly brings into this state 60

kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(d)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine, as described in s. 893.03(2)(b)23., a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture containing phencyclidine, as described in s. 893.03(2)(b)23. ~~893.03(2)(b)~~, a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., commits a felony of the first degree, which felony shall be known as "trafficking in phencyclidine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly brings into this state 800 grams or more of phencyclidine, as described in s. 893.03(2)(b)23., a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture containing phencyclidine, as described in s. 893.03(2)(b)23. ~~893.03(2)(b)~~, a substituted phenylcyclohexylamine, as described in s. 893.03(1)(c)195., or a substance described in s. 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the probable result of such importation would be the death of any person commits capital importation of phencyclidine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(k)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of a ~~any of the following substances described in s. 893.03(1)(c)~~:

a. Substance described in s. 893.03(1)(c)4., 5., 10., 11., 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,

90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163., 165., or 187.-189., a substituted cathinone, as described in s. 893.03(1)(c)191., or substituted phenethylamine, as described in s. 893.03(1)(c)192.;

b. Mixture containing any substance described in sub-subparagraph a.; or

c. Salt, isomer, ester, or ether or salt of an isomer, ester, or ether of a substance described in sub-subparagraph a.,

~~a. (MDMA) 3,4-Methylenedioxymethamphetamine;~~

~~b. DOB (4-Bromo-2,5-dimethoxyamphetamine);~~

~~c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~

~~d. 2,5-Dimethoxyamphetamine;~~

~~e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~

~~f. N-ethylamphetamine;~~

~~g. 3,4-Methylenedioxy-N-hydroxyamphetamine;~~

~~h. 5-Methoxy-3,4-methylenedioxyamphetamine;~~

~~i. PMA (4-methoxyamphetamine);~~

~~j. PMMA (4-methoxymethamphetamine);~~

~~k. DOM (4-Methyl-2,5-dimethoxyamphetamine);~~

~~l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~

~~m. MDA (3,4-Methylenedioxyamphetamine);~~

~~n. N,N-dimethylamphetamine;~~

~~o. 3,4,5-Trimethoxyamphetamine;~~

~~p. Methylone (3,4-Methylenedioxymethcathinone);~~

~~q. MDPV (3,4-Methylenedioxypyrovalerone); or~~

~~r. Methylmethcathinone,~~

~~individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in~~

~~sub-subparagraphs a.-r.,~~ commits a felony of the first degree, which felony shall be known as "trafficking in phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 10 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of $50,000.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of $100,000.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of $250,000.

3. A person who knowingly manufactures or brings into this state 30 kilograms or more of a substance described in sub-subparagraph 1.a., a mixture described in sub-subparagraph 1.b., or a salt, isomer, ester, or ether or a salt of an isomer, ester, or ether described in sub-subparagraph 1.c., ~~any of the following substances described in s. 893.03(1)(c):~~

~~a. MDMA (3,4-Methylenedioxymethamphetamine);~~

~~b. DOB (4-Bromo-2,5-dimethoxyamphetamine);~~

~~c. 2C-B (4-Bromo-2,5-dimethoxyphenethylamine);~~

~~d. 2,5-Dimethoxyamphetamine;~~

~~e. DOET (4-Ethyl-2,5-dimethoxyamphetamine);~~

~~f. N-ethylamphetamine;~~

~~g. N-Hydroxy-3,4-methylenedioxyamphetamine;~~

~~h. 5-Methoxy-3,4-methylenedioxyamphetamine;~~

~~i. PMA (4-methoxyamphetamine);~~

~~j. PMMA (4-methoxymethamphetamine);~~

~~k. DOM (4-Methyl-2,5-dimethoxyamphetamine);~~

~~l. MDEA (3,4-Methylenedioxy-N-ethylamphetamine);~~

~~m. MDA (3,4-Methylenedioxyamphetamine);~~

~~n. N,N-dimethylamphetamine;~~

~~o. 3,4,5-Trimethoxyamphetamine;~~

~~p. Methylone (3,4-Methylenedioxymethcathinone);~~

~~q. MDPV (3,4-Methylenedioxypyrovalerone); or~~

~~r. Methylmethcathinone,~~

~~individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r.,~~ and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of phenethylamines, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine ~~provided~~ under subparagraph 2. ~~1.~~

(m)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 280 grams or more of a:

a. Substance described in s. 893.03(1)(c)30., 46.-50., 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic cannabinoid, as described in s. 893.03(1)(c)190.; or

b. Mixture containing any substance described in sub-subparagraph a.,

commits a felony of the first degree, which felony shall be known as "trafficking in synthetic cannabinoids," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 280 grams or more, but less than 500 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 500 grams or more, but less than 1,000 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 1,000 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years, and the defendant shall be ordered to pay a fine of $200,000.

d. Is 30 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and the defendant shall be ordered to pay a fine of $750,000.

(n)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of:

a. A substance described in s. 893.03(1)(c)164., 174., or 175., a n-benzyl phenethylamine compound, as described in s. 893.03(1)(c)193.; or

b. A mixture containing any substance described in sub-subparagraph a.,

commits a felony of the first degree, which felony shall be known as "trafficking in n-benzyl phenethylamines," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. If the quantity involved under subparagraph 1.:

a. Is 14 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 100 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years , and the defendant shall be ordered to pay a fine of $500,000.

3. A person who knowingly manufactures or brings into this state 400 grams or more of a substance described in sub-subparagraph 1.a. or a mixture described in sub-subparagraph 1.b., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of a n-benzyl phenethylamine compound, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine under subparagraph 2.

(8) For an offense listed under this section committed on or after October 1, 2017, which carries a mandatory minimum sentence, a court may depart from the applicable mandatory

minimum sentence if, in giving due regard to the nature of the crime, history, and character of the defendant, and the defendant's chances of successful rehabilitation, the court finds compelling reasons on the record that imposition of the mandatory minimum is not necessary for the protection of the public. Each month, a court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons in each case in which the court departed from the mandatory minimum sentence.

Section 7. For the purpose of incorporating the amendments made by this act to sections 893.03, 893.13, and 893.135, Florida Statutes, in references thereto, paragraphs (a), (b), (c), (d), and (e) of subsection (3) of section 921.0022, Florida Statutes, are reenacted, and paragraphs (g), (h), and (i) of subsection (3) of that section are amended, to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(a) LEVEL 1

Florida Statute	Felony Degree	Description
24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.

212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than $300 but less than $20,000.
316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.

322.212(5)(a)	3rd	False application for driver license or identification card.
414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than $200.
443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than $300.
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
562.27(1)	3rd	Possess still or still apparatus.
713.69	3rd	Tenant removes property upon which lien has accrued, value more than $50.
812.014(3)(c)	3rd	Petit theft (3rd conviction);

		theft of any property not specified in subsection (2).
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
826.01	3rd	Bigamy.
828.122(3)	3rd	Fighting or baiting animals.
831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.

831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
832.041(1)	3rd	Stopping payment with intent to defraud $150 or more.
832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks $150 or more or obtaining property in return for worthless check $150 or more.
838.15(2)	3rd	Commercial bribe receiving.
838.16	3rd	Commercial bribery.
843.18	3rd	Fleeing by boat to elude a law enforcement officer.
847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
849.01	3rd	Keeping gambling house.
849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or

		advertise drawing for prizes, or dispose of property or money by means of lottery.
849.23	3rd	Gambling-related machines; "common offender" as to property rights.
849.25(2)	3rd	Engaging in bookmaking.
860.08	3rd	Interfere with a railroad signal.
860.13(1)(a)	3rd	Operate aircraft while under the influence.
893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.

(b) LEVEL 2

Florida Statute	Felony Degree	Description

379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
590.28(1)	3rd	Intentional burning of lands.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor

		beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
812.014(2)(c)1.	3rd	Grand theft, 3rd degree; $300 or more but less than $5,000.
812.014(2)(d)	3rd	Grand theft, 3rd degree; $100 or more but less than $300, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.

817.234(1)(a)2.	3rd	False statement in support of insurance claim.
817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)	3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
817.60(5)	3rd	Dealing in credit cards of another.
817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.

831.01	3rd	Forgery.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.08	3rd	False personation.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,

		(2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.

319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431	3rd	Taking, disturbing, mutilating,

(1)(e)5.		destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product

		or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.

810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.

817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.

843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public

		housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.

893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.

944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or

		transaction statements.
499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official

		or employee.
784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.

790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.

812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
837.02(1)	3rd	Perjury in official

		proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition

		using computer; offender less than 18 years.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving

		away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false,

		misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.

796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.

812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
817.611(2)(a)	2nd	Traffic in or possess 5 to 14

		counterfeit credit cards or related documents.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for

		religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.

316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care

		profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental

		hygiene without a license.
467.201	3rd	Practicing midwifery without a license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(7)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or

		payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.

784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.

787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.

800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized

		emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
817.535(2)(a)	3rd	Filing false lien or other

		unauthorized document.
817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $10,000 or more, but less than $50,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.

838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a

		criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
893.135	1st	Trafficking in oxycodone, 14

(1)(c)3.b.		grams or more, less than 25 grams.
893.135 (1)(c)4.b.(I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
893.135(1)(d)1.a. ~~893.135(1)(d)1.~~	1st	Trafficking in phencyclidine, ~~more than~~ 28 grams or more, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, ~~more than~~ 200 grams or more, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, ~~more than~~ 14 grams or more, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135	1st	Trafficking in 1,4-Butanediol,

(1)(j)1.a.		1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.135(1)(m)2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
893.135(1)(m)2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or more, less than 1,000 grams.
893.135(1)(n)2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration

		requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to

		report and reregister; failure to respond to address verification; providing false registration information.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding $20,000, but less

		than $100,000 by money transmitter.
560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding $20,000, but less than $100,000.
655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
782.051(2)	1st	Attempted felony murder while

		perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
787.06(3)(a)1.	1st	Human trafficking for labor and services of a child.
787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
787.06(3)(c)2.	1st	Human trafficking using coercion for labor and services of an unauthorized alien adult.
787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.

787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.
794.011(5)(b)	2nd	Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.
794.011(5)(c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.

794.011(5)(d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
800.04(4)(b)	2nd	Lewd or lascivious battery.
800.04(4)(c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.

810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.

817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
817.611(2)(c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(3)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $50,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a

		capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than

		10,000 lbs.
893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
893.135 (1)(c)3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
893.135 (1)(c)4.b.(II)	1st	Trafficking in fentanyl, 14 grams or more, less than 28 grams.
893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, ~~more than~~ 200 grams or more, less than 400 grams.
893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, ~~more than~~ 5 kilograms or more, less than 25 kilograms.

893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, ~~more than~~ 28 grams or more, less than 200 grams.
893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
893.135(1)(m)2.c.	1st	Trafficking in synthetic cannabinoids, 1,000 grams or more, less than 30 kilograms.
893.135(1)(n)2.b.	1st	Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.

893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $20,000 but less than

		$100,000.

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35 (3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
499.0051(8)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.
560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.

655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
775.0844	1st	Aggravated white collar crime.
782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.

787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
790.161	1st	Attempted capital destructive device offense.
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)(a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
794.011(4)(b)	1st	Sexual battery, certain

		circumstances; victim and offender 18 years of age or older.
794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
812.13(2)(a)	1st,PBL	Robbery with firearm or other

		deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.
817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of

		18 by his or her parent, legal guardian, or person exercising custodial authority.
827.03(2)(a)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135	1st	Trafficking in cocaine, more

(1)(b)1.c.		than 400 grams, less than 150 kilograms.
893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135 (1)(c)2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.
893.135 (1)(c)3.d.	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
893.135 (1)(c)4.b.(III)	1st	Trafficking in fentanyl, 28 grams or more.
893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, ~~more than~~ 400 grams or more.
893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, ~~more than~~ 25 kilograms or more.
893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, ~~more than~~ 200 grams or more.
893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
893.135 (1)(m)2.d.	1st	Trafficking in synthetic cannabinoids, 30 kilograms or more.
893.135(1)(n)2.c.	1st	Trafficking in n-benzyl phenethylamines, 200 grams or more.
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.

Section 8. Present subsection (11) of section 775.082, Florida Statutes, is redesignated as subsection (12), and a new subsection (11) is added to that section, to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(11) If a defendant is sentenced for a primary offense of possession of a controlled substance committed on or after October 1, 2017, and if the total sentence points pursuant to s. 921.0024 are 60 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section. As used in this subsection, the term "possession of a controlled substance" means possession of a controlled substance in violation of s. 893.13, but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135.

Section 9. Section 921.0026, Florida Statutes, is amended to read:

921.0026 Mitigating circumstances.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(1) A downward departure from the lowest permissible sentence, as calculated according to the total sentence points pursuant to s. 921.0024, is prohibited unless there are circumstances or factors that reasonably justify the downward departure. Mitigating factors to be considered include, but are not limited to, those listed in subsection (2). The imposition of a sentence below the lowest permissible sentence is subject

to appellate review under chapter 924, but the extent of downward departure is not subject to appellate review.

(2) Mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified include, but are not limited to:

(a) The departure results from a legitimate, uncoerced plea bargain.

(b) The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.

(c) The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.

(d) For an offense committed on or after October 1, 1998, but before October 1, 2017, the defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.

(e) For an offense committed on or after October 1, 2017, the defendant requires specialized treatment for an addiction, a mental disorder, or a physical disability, and the defendant is amenable to treatment.

(f) ~~(c)~~ The need for payment of restitution to the victim outweighs the need for a prison sentence.

(g) ~~(f)~~ The victim was an initiator, willing participant, aggressor, or provoker of the incident.

(h) ~~(g)~~ The defendant acted under extreme duress or under the domination of another person.

(i) ~~(h)~~ Before the identity of the defendant was determined, the victim was substantially compensated.

(j) ~~(i)~~ The defendant cooperated with the state to resolve the current offense or any other offense.

(k) ~~(j)~~ The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.

(l) ~~(k)~~ At the time of the offense the defendant was too young to appreciate the consequences of the offense.

(m) ~~(l)~~ The defendant is to be sentenced as a youthful offender.

(n) ~~(m)~~ The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. Except as provided in this paragraph, the defendant's substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor for an offense committed on or after October 1, 1998, but before October 1, 2017, and does not, under any circumstance, justify a downward departure from the permissible sentencing range ~~For purposes of this paragraph, the term "nonviolent felony" has the same meaning as provided in s. 948.08(6)~~.

(o) ~~(n)~~ The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

(3) As used in subsection (2), the term "nonviolent felony" has the same meaning as provided in s. 948.08 ~~Except as provided in paragraph (2)(m), the defendant's substance abuse or~~

~~addiction, including intoxication at the time of the offense, is not a mitigating factor under subsection (2) and does not, under any circumstances, justify a downward departure from the permissible sentencing range~~.

Section 10. Subsection (7) of section 948.01, Florida Statutes, is amended to read:

948.01 When court may place defendant on probation or into community control.—

(7)(a) Notwithstanding s. 921.0024 and effective for offenses committed on or after July 1, 2009, the sentencing court may place the defendant into a postadjudicatory treatment-based drug court program if the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer, the offense is a nonviolent felony, the defendant is amenable to substance abuse treatment, and the defendant otherwise qualifies under s. 397.334(3). The satisfactory completion of the program shall be a condition of the defendant's probation or community control. ~~As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.~~

(b) Notwithstanding s. 921.0024 and effective for offenses committed on or after October 1, 2017, the sentencing court must place the defendant into a postadjudicatory treatment-based drug court program, into residential drug treatment, or on drug offender probation if the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer, the offense is a nonviolent felony, the defendant is amenable to substance abuse treatment, the defendant's criminal

behavior is related to substance abuse or addiction, and the defendant otherwise qualifies under s. 397.334(3). The satisfactory completion of the program must be a condition of the defendant's probation or community control.

(c)~~(b)~~ In order to be placed in a postadjudicatory treatment-based drug court program under paragraph (a) or paragraph (b), the defendant must be fully advised of the purpose of the program, and the defendant must agree to enter the program. The original sentencing court shall relinquish jurisdiction of the defendant's case to the postadjudicatory drug court program until the defendant is no longer active in the program, the case is returned to the sentencing court due to the defendant's termination from the program for failure to comply with the terms thereof, or the defendant's sentence is completed.

(d) As used in this subsection, the term "nonviolent felony" means a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08.

Section 11. For the purpose of incorporating the amendment made by this act to section 921.0026, Florida Statutes, in references thereto, paragraphs (b) and (c) of subsection (1) of section 775.08435, Florida Statutes, are reenacted to read:

775.08435 Prohibition on withholding adjudication in felony cases.—

(1) Notwithstanding the provisions of s. 948.01, the court may not withhold adjudication of guilt upon the defendant for:

(b) A second degree felony offense unless:

1. The state attorney requests in writing that adjudication

be withheld; or

2. The court makes written findings that the withholding of adjudication is reasonably justified based on circumstances or factors in accordance with those set forth in s. 921.0026.

Notwithstanding any provision of this section, no adjudication of guilt shall be withheld for a second degree felony offense if the defendant has a prior withholding of adjudication for a felony that did not arise from the same transaction as the current felony offense.

(c) A third degree felony offense if the defendant has a prior withholding of adjudication for a felony offense that did not arise from the same transaction as the current felony offense unless:

1. The state attorney requests in writing that adjudication be withheld; or

2. The court makes written findings that the withholding of adjudication is reasonably justified based on circumstances or factors in accordance with those set forth in s. 921.0026.

Notwithstanding any provision of this section, no adjudication of guilt shall be withheld for a third degree felony offense if the defendant has two or more prior withholdings of adjudication for a felony that did not arise from the same transaction as the current felony offense.

Section 12. For the purpose of incorporating the amendment made by this act to section 921.0026, Florida Statutes, in a reference thereto, subsection (3) of section 921.002, Florida Statutes, is reenacted to read:

921.002 The Criminal Punishment Code.—The Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998.

(3) A court may impose a departure below the lowest permissible sentence based upon circumstances or factors that reasonably justify the mitigation of the sentence in accordance with s. 921.0026. The level of proof necessary to establish facts supporting the mitigation of a sentence is a preponderance of the evidence. When multiple reasons exist to support the mitigation, the mitigation shall be upheld when at least one circumstance or factor justifies the mitigation regardless of the presence of other circumstances or factors found not to justify mitigation. Any sentence imposed below the lowest permissible sentence must be explained in writing by the trial court judge.

Section 13. For the purpose of incorporating the amendment made by this act to section 921.0026, Florida Statutes, in a reference thereto, subsection (1) of section 921.00265, Florida Statutes, is reenacted to read:

921.00265 Recommended sentences; departure sentences; mandatory minimum sentences.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(1) The lowest permissible sentence provided by calculations from the total sentence points pursuant to s. 921.0024(2) is assumed to be the lowest appropriate sentence for the offender being sentenced. A departure sentence is prohibited unless there are mitigating circumstances or factors present as provided in s. 921.0026 which reasonably justify a departure.

Section 14. For the purpose of incorporating the amendment made by this act to section 948.01, Florida Statutes, in references thereto, subsection (2) and paragraph (a) of subsection (4) of section 394.47892, Florida Statutes, are reenacted to read:

394.47892 Mental health court programs.—

(2) Mental health court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, postadjudicatory mental health court programs as provided in ss. 948.01 and 948.06, and review of the status of compliance or noncompliance of sentenced defendants through a mental health court program.

(4)(a) Entry into a postadjudicatory mental health court program as a condition of probation or community control pursuant to s. 948.01 or s. 948.06 must be based upon the sentencing court’s assessment of the defendant’s criminal history, mental health screening outcome, amenability to the services of the program, and total sentence points; the recommendation of the state attorney and the victim, if any; and the defendant’s agreement to enter the program.

Section 15. For the purpose of incorporating the amendment made by this act to section 948.01, Florida Statutes, in references thereto, paragraph (a) of subsection (3) and subsection (5) of section 397.334, Florida Statutes, are reenacted to read:

397.334 Treatment-based drug court programs.—

(3)(a) Entry into any postadjudicatory treatment-based drug court program as a condition of probation or community control pursuant to s. 948.01, s. 948.06, or s. 948.20 must be based

upon the sentencing court's assessment of the defendant's criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, the recommendation of the state attorney and the victim, if any, and the defendant's agreement to enter the program.

(5) Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs as provided in ss. 948.01, 948.06, and 948.20, and review of the status of compliance or noncompliance of sentenced offenders through a treatment-based drug court program. While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy developed by a drug court team under subsection (4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of secure detention under chapter 985 if a child or a period of incarceration within the time limits established for contempt of court if an adult. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.

Section 16. For the purpose of incorporating the amendment made by this act to section 948.01, Florida Statutes, in a reference thereto, paragraph (a) of subsection (5) of section

910.035, Florida Statutes, is reenacted to read:

910.035 Transfer from county for plea, sentence, or participation in a problem-solving court.—

(5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING COURT.—

(a) For purposes of this subsection, the term "problem-solving court" means a drug court pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a military veterans' and servicemembers' court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; a mental health court program pursuant to s. 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16; or a delinquency pretrial intervention court program pursuant to s. 985.345.

Section 17. For the purpose of incorporating the amendment made by this act to section 948.01, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 921.187, Florida Statutes, is reenacted to read:

921.187 Disposition and sentencing; alternatives; restitution.—

(1) The alternatives provided in this section for the disposition of criminal cases shall be used in a manner that will best serve the needs of society, punish criminal offenders, and provide the opportunity for rehabilitation. If the offender does not receive a state prison sentence, the court may:

(c) Place the offender on probation with or without an adjudication of guilt pursuant to s. 948.01.

Section 18. For the purpose of incorporating the amendment made by this act to section 948.01, Florida Statutes, in a reference thereto, section 943.04352, Florida Statutes, is reenacted to read:

943.04352 Search of registration information regarding sexual predators and sexual offenders required when placement on misdemeanor probation.—When the court places a defendant on misdemeanor probation pursuant to ss. 948.01 and 948.15, the public or private entity providing probation services must conduct a search of the probationer's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the Department of Law Enforcement under s. 943.043. The probation services provider may conduct the search using the Internet site maintained by the Department of Law Enforcement. Also, a national search must be conducted through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.

Section 19. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 39.806, Florida Statutes, is reenacted to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(d) When the parent of a child is incarcerated and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a significant portion of the child's minority. When determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by the court

to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child. When determining harm, the court shall consider the following factors:

a. The age of the child.

b. The relationship between the child and the parent.

c. The nature of the parent's current and past provision for the child's developmental, cognitive, psychological, and physical needs.

d. The parent's history of criminal behavior, which may include the frequency of incarceration and the unavailability of the parent to the child due to incarceration.

e. Any other factor the court deems relevant.

Section 20. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 63.089, Florida Statutes, is reenacted to read:

63.089 Proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment.—

(4) FINDING OF ABANDONMENT.—A finding of abandonment resulting in a termination of parental rights must be based upon clear and convincing evidence that a parent or person having legal custody has abandoned the child in accordance with the definition contained in s. 63.032. A finding of abandonment may also be based upon emotional abuse or a refusal to provide reasonable financial support, when able, to a birth mother during her pregnancy or on whether the person alleged to have abandoned the child, while being able, failed to establish contact with the child or accept responsibility for the child's welfare.

(b) The child has been abandoned when the parent of a child is incarcerated on or after October 1, 2001, in a federal, state, or county correctional institution and:

1. The period of time for which the parent has been or is expected to be incarcerated will constitute a significant portion of the child's minority. In determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;

2. The incarcerated parent has been determined by a court

of competent jurisdiction to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, convicted of child abuse as defined in s. 827.03, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of a substantially similar offense in another jurisdiction. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, termination of the parental rights of the incarcerated parent is in the best interests of the child.

Section 21. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, subsection (10) of section 95.11, Florida Statutes, is reenacted to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph

(4)(d), an action for wrongful death seeking damages authorized under s. 768.21 brought against a natural person for an intentional tort resulting in death from acts described in s. 782.04 or s. 782.07 may be commenced at any time. This subsection shall not be construed to require an arrest, the filing of formal criminal charges, or a conviction for a violation of s. 782.04 or s. 782.07 as a condition for filing a civil action.

Section 22. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, paragraph (b) of subsection (1) and paragraphs (a), (b), and (c) of subsection (3) of section 775.082, Florida Statutes, are reenacted to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.—

(1)

(b)1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance

with s. 921.1402(2)(a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed before October 1, 1983, by a term of imprisonment for life or for a term of at least 30 years.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment

for life or by imprisonment for a term of years not exceeding life imprisonment.

4.a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of at least 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

5. Notwithstanding subparagraphs 1.-4., a person who is convicted under s. 782.04 of an offense that was reclassified as a life felony which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

6. For a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g), by a term of imprisonment for life.

(b)1. For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

2. Notwithstanding subparagraph 1., a person convicted under s. 782.04 of a first degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life, which was committed before the person attained 18 years of age may be punished by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of

imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(c) Notwithstanding paragraphs (a) and (b), a person convicted of an offense that is not included in s. 782.04 but that is an offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(d).

Section 23. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in references thereto, subsections (1) and (2) of section 775.0823, Florida Statutes, are reenacted to read:

775.0823 Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.—The Legislature does hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to s. 27.01 or assistant state attorney appointed under s. 27.181; or against any justice or judge of a court described in Art. V of the State Constitution, which offense arises out of or in the scope of the officer's duty as a law enforcement or correctional officer, the state attorney's or assistant state attorney's duty as a prosecutor or investigator, or the justice's or judge's duty as a judicial officer, as follows:

(1) For murder in the first degree as described in s. 782.04(1), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release.

(2) For attempted murder in the first degree as described in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

Notwithstanding the provisions of s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

Section 24. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, subsection (1) of section 921.16, Florida

Statutes, is reenacted to read:

921.16 When sentences to be concurrent and when consecutive.—

(1) A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently. Any sentence for sexual battery as defined in chapter 794 or murder as defined in s. 782.04 must be imposed consecutively to any other sentence for sexual battery or murder which arose out of a separate criminal episode or transaction.

Section 25. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (c) of subsection (8) of section 948.06, Florida Statutes, is reenacted to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(8)

(c) For purposes of this section, the term "qualifying offense" means any of the following:

1. Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), or luring or enticing a child under s. 787.025(2)(b)

or (c).

2. Murder or attempted murder under s. 782.04, attempted felony murder under s. 782.051, or manslaughter under s. 782.07.

3. Aggravated battery or attempted aggravated battery under s. 784.045.

4. Sexual battery or attempted sexual battery under s. 794.011(2), (3), (4), or (8)(b) or (c).

5. Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4), lewd or lascivious molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious conduct under s. 800.04(6)(b), lewd or lascivious exhibition under s. 800.04(7)(b), or lewd or lascivious exhibition on computer under s. 847.0135(5)(b).

6. Robbery or attempted robbery under s. 812.13, carjacking or attempted carjacking under s. 812.133, or home invasion robbery or attempted home invasion robbery under s. 812.135.

7. Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025.

8. Sexual performance by a child or attempted sexual performance by a child under s. 827.071.

9. Computer pornography under s. 847.0135(2) or (3), transmission of child pornography under s. 847.0137, or selling or buying of minors under s. 847.0145.

10. Poisoning food or water under s. 859.01.

11. Abuse of a dead human body under s. 872.06.

12. Any burglary offense or attempted burglary offense that is either a first degree felony or second degree felony under s.

810.02(2) or (3).

13. Arson or attempted arson under s. 806.01(1).

14. Aggravated assault under s. 784.021.

15. Aggravated stalking under s. 784.048(3), (4), (5), or (7).

16. Aircraft piracy under s. 860.16.

17. Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4).

18. Treason under s. 876.32.

19. Any offense committed in another jurisdiction which would be an offense listed in this paragraph if that offense had been committed in this state.

Section 26. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 948.062, Florida Statutes, is reenacted to read:

948.062 Reviewing and reporting serious offenses committed by offenders placed on probation or community control.—

(1) The department shall review the circumstances related to an offender placed on probation or community control who has been arrested while on supervision for the following offenses:

(a) Any murder as provided in s. 782.04;

Section 27. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 985.265, Florida Statutes, is reenacted to read:

985.265 Detention transfer and release; education; adult jails.—

(3)

(b) When a juvenile is released from secure detention or transferred to nonsecure detention, detention staff shall immediately notify the appropriate law enforcement agency, school personnel, and victim if the juvenile is charged with committing any of the following offenses or attempting to commit any of the following offenses:

1. Murder, under s. 782.04;

2. Sexual battery, under chapter 794;

3. Stalking, under s. 784.048; or

4. Domestic violence, as defined in s. 741.28.

Section 28. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 1012.315, Florida Statutes, is reenacted to read:

1012.315 Disqualification from employment.—A person is ineligible for educator certification, and instructional personnel and school administrators, as defined in s. 1012.01, are ineligible for employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students under s. 1002.39 or s. 1002.395, if the person, instructional personnel, or school administrator has been convicted of:

(1) Any felony offense prohibited under any of the following statutes:

(d) Section 782.04, relating to murder.

Section 29. For the purpose of incorporating the amendment made by this act to section 782.04, Florida Statutes, in a reference thereto, paragraph (g) of subsection (2) of section

1012.467, Florida Statutes, is reenacted to read:

1012.467 Noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.—

(2)

(g) A noninstructional contractor for whom a criminal history check is required under this section may not have been convicted of any of the following offenses designated in the Florida Statutes, any similar offense in another jurisdiction, or any similar offense committed in this state which has been redesignated from a former provision of the Florida Statutes to one of the following offenses:

1. Any offense listed in s. 943.0435(1)(h)1., relating to the registration of an individual as a sexual offender.

2. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and the reporting of such sexual misconduct.

3. Section 394.4593, relating to sexual misconduct with certain mental health patients and the reporting of such sexual misconduct.

4. Section 775.30, relating to terrorism.

5. Section 782.04, relating to murder.

6. Section 787.01, relating to kidnapping.

7. Any offense under chapter 800, relating to lewdness and indecent exposure.

8. Section 826.04, relating to incest.

9. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

Section 30. 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 19, 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 my bill, SB 150 – Controlled Substances, has been referred to the Senate Appropriations Committee. This bill passed the Senate Judiciary Committee on April 19. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

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

Very respectfully yours,

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)

4-25-17
Meeting Date

150
Bill Number (if applicable)

355094
Amendment Barcode (if applicable)

Topic Controlled Substances

Name Bob Guiltieri

Job Title Sheriff

Address 10750 Ulmerton Road
Street

Largo FL 33778
City *State* *Zip*

Phone 727-582-6200

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

150
Bill Number (if applicable)

[redacted] 355094
Amendment Barcode (if applicable)

Topic Controlled Substances

Name Andrew Fay

Job Title Special Counsel

Address PL 02
Street

Tallahassee FL
City *State* *Zip*

Phone 245-0155

Email Andrew.Fay@myfloridalegal.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Department of Legal Affairs

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

4/25/17
Meeting Date

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

CS/CS/SB 150
Bill Number (if applicable)

355094
Amendment Barcode (if applicable)

Topic Drug offense Sentences

Name Nancy Daniels

Job Title Legislative Consultant, Florida Public Defender Association

Address 103 N Gadsden St
Street

Phone 850 488-6850

Tallahassee FL 32308
City *State* *Zip*

Email ndaniels@flpda.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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)

4/25/17
Meeting Date

150
Bill Number (if applicable)

145864
Amendment Barcode (if applicable)

Topic Controlled Substances

Name Andrew Fay

Job Title Special Counsel

Address PL 01
Street

Tallahassee
City *State* *Zip*

Phone 245-0155

Email Andrew.Fay@myfloridalegal.com

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

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

Representing Depart of Legal Affairs

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

April 25, 2017
Meeting Date

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

150
Bill Number (if applicable)

1458664
Amendment Barcode (if applicable)

Topic Controlled Substances

Name Chief Jeffrey Chudnow

Job Title Chief of Police

Address 2636 Mitcham Drive
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 850-219-3631

Email bhoward@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

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)

4/25/2017
Meeting Date

150
Bill Number (if applicable)

145864
Amendment Barcode (if applicable)

Topic Controlled Substances

Name Bob Gualtieri

Job Title Sheriff

Address 10750 Ulmerton Road
Street

Largo FL 33778
City *State* *Zip*

Phone 727-582-6200

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

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)

4/25/17
Meeting Date

SB 150
Bill Number (if applicable)

Topic Drug Trafficking

Amendment Barcode (if applicable)
531844
145864

Name Buddy Jacobs

Job Title General Counsel Fla. Prosecuting Attorneys Association

Address 961687 Gateway Blvd.
Street

Phone

Fernandina Beach FLa
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing State Attorneys of Fla.

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)

Meeting Date	Bill Number (if applicable)
	SB 150

Amendment Barcode (if applicable)
531844
145-864

Topic Drug Trafficking

Name Buddy JACOBS

Job Title General Counsel FLA. Prosecuting Attorneys Assoc.

Address 961687 Gateway Blvd. Phone 9042613693
Street

Fernandina Bch FL 32034 Email
City State Zip

Speaking: ☑ For ☐ Against ☐ Information

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

Representing State Attorneys of FLA.

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)

25 Apr 17
Meeting Date

150
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall FL
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

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)

April 25, 2017
Meeting Date

150
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Chief Jeffrey Chudnow

Job Title Chief of Police

Address 2636 Mitcham Drive
Street

Phone 850-219-3631

Tallahassee FL 32308
City *State* *Zip*

Email bhoward@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

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)

4/25/2017
Meeting Date

150
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Bob Gualtieri

Job Title Sheriff

Address 10750 Ulmerton Road
Street

Largo FL 33778
City *State* *Zip*

Phone 727-582-6200

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

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)

4/25/17
Meeting Date

150
Bill Number (if applicable)

Topic CONTROLLED SUBSTANCES

Amendment Barcode (if applicable)

Name LISA HURLEY

Job Title

Address 311 E. PARK AVE
Street
TALLAHASSEE, FL 32301
City *State* *Zip*

Phone 850.224.5081

Email lhurley@southbaygen.com

Speaking: ☑ For ☐ Against ☐ Information ~~☐~~ Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA ASSOC. OF COUNTIES

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)

4-25-17
Meeting Date

150
Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Policy Director

Address 2808 Mahan Dr
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 8508782196

Email jill@myfbha.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Behavioral Health Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 150
Bill Number (if applicable)

Topic Drug Trafficking

Amendment Barcode (if applicable)

Name Buddy Jacobs

Job Title General Counsel Fla. Prosecuting Attorneys Assoc.

Address 961687 Gateway Blvd.
Street

Phone

Fernandina Bch FL
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing State Attorneys of Fla.

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 330 (921336)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; and Senator Steube
SUBJECT:	Local Business Taxes
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Fav/CS**
2.	Babin	Diez-Arguelles	AFT	**Recommend: Fav/CS**
3.	Babin	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 330 provides an exemption from the local business tax for:

- Veterans.
- Spouses and surviving spouses of veterans.
- Certain spouses of active servicemembers.
- Individuals who receive public assistance.
- Low-income individuals.
- Business entities when a controlling interest thereof is owned by an individual listed above.

Qualifying individuals must complete and sign a Request for Fee Exemption.

The bill is effective upon becoming a law.

The Revenue Estimating Conference estimates that the bill will reduce local business tax revenues by $23.2 million beginning in Fiscal Year 2017-2018, with a recurring reduction of $23.2 million.

This 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:

Local Business Tax

The local business tax, authorized in ch. 205, F.S., means the fees charged and the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.[1] Counties and municipalities may levy a business tax.[2]

Eligibility Requirements

County and municipal governments are eligible to levy, by appropriate resolution or ordinance, a business tax for the privilege of engaging in or managing any business, profession, or occupation within their jurisdictions. If adopted by ordinance prior to January 1, 1995, a county, as defined in s. 125.011(1), F.S., (i.e., Miami-Dade County) or any adjacent county (i.e., Broward, Collier, and Monroe counties) is authorized to levy and collect an additional business tax up to 50 percent of the appropriate business tax imposed under s. 205.033(1), F.S.[3]

Administrative Procedures

To levy a business tax, the governing body must first give at least 14 days of public notice between the first and last reading of the resolution or ordinance by publishing a notice in a newspaper of general circulation within its jurisdiction.[4] The public notice must contain the proposed classifications and rates applicable to the business tax.[5] A number of other conditions for levy are imposed on counties and municipalities.[6]

For purposes of ch. 205, F.S., the terms "business," "profession," and "occupation" do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in the state.[7] These institutions are more particularly defined and limited in statute.[8] The term "receipt" means the document that is issued by the local governing authority which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of ch. 205, F.S., relating to the business tax.[9]

The governing body of a municipality that levies the tax may request that the county in which the municipality is located issue the municipal receipt and collect the tax.[10] The governing body of a county that levies the tax may request that municipalities within the county issue the county

[1] Section 205.022(5), F.S.
[2] Sections 205.033 and 205.043, F.S.
[3] Section 205.033(6), F.S.
[4] Sections 205.032 and 205.042, F.S.
[5] *Id.*
[6] Sections 205.033 and 205.043, F.S.
[7] Section 205.022(1), F.S.
[8] *Id.*
[9] Section 205.022(2), F.S.
[10] Section 205.045, F.S.

receipt and collect the tax.[11] However, before any local government issues any business receipts on behalf of another local government, appropriate agreements must be entered into by the affected local governments.[12] All business tax receipts are sold by the appropriate tax collector beginning July 1 of each year.[13] The taxes are due and payable on or before September 30 of each year, and the receipts expire on September 30 of the succeeding year.[14] In several situations, administrative penalties are also imposed.[15]

A county or municipality that has not adopted a business tax ordinance or resolution may adopt a business tax ordinance.[16] The tax rate structure and classifications in the adopted ordinance must be reasonable and based upon the rate structure and classifications prescribed in ordinances adopted by adjacent local governments that have implemented s. 205.0535, F.S.[17] If no adjacent local government has implemented s. 205.0535, F.S., or if the governing body of the county or municipality finds that the rate structures or classifications of adjacent local governments are unreasonable, then an alternative method is authorized. In such a case, the rate structure or classifications prescribed in the ordinance of the local government seeking to impose the tax may be based upon those prescribed in ordinances adopted by local governments that have implemented s. 205.0535, F.S., in counties or municipalities that have a comparable population.[18]

Prior to October 1, 2008, any municipality that adopted by ordinance a local business tax after October 1, 1995, could, by ordinance, reclassify businesses, professions, and occupations and establish new rate structures, provided certain conditions were met. If such conditions were met, counties and municipalities could, every other year thereafter, increase or decrease by ordinance the rates of business taxes by up to 5 percent. Any subsequent increase must be enacted by at least a majority plus one vote of the governing body.[19] A county or municipality is not prohibited from decreasing or repealing any authorized local business tax. The governing body may adopt an ordinance by majority vote that repeals a local business tax or establishes new rates that decrease local business taxes and do not result in an increase in local business taxes for a taxpayer without having to establish an equity study commission.[20]

Exemptions

State law exempts, or allows local governments to exempt, certain individuals from all or some portion of local business taxes.[21] Customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions are excluded from the definition of "business," "profession," and "occupation" and are thereby excluded from

[11] *Id.*
[12] *Id.*
[13] Section 205.053, F.S.
[14] *Id.*
[15] *Id.*
[16] Section 205.0315, F.S.
[17] *Id.*
[18] *Id.*
[19] Section 205.0535(4), F.S.
[20] Section 205.0535(5), F.S.
[21] Sections 205.054, 205.063, 205.064, 205.065, 205.066, 205.067, 205.162, 205.171, 205.191, 205.192, and 205.193, F.S.

paying local business taxes.[22] The delivery and transportation of tangible personal property by a business that is otherwise required to pay a local business tax may not be charged a separate local business tax for such delivery or transportation service.[23] There are also exemptions for persons engaged in specified farming activities,[24] certain nonresident persons regulated by the Department of Business and Professional Regulation,[25] certain employees of businesses that are required to pay a local business tax,[26] certain disabled persons, the elderly, and widows with minor dependents,[27] disabled veterans of any war or their unremarried spouses,[28] and certain mobile home setup operations.[29] A charitable, religious, fraternal, youth, civic, service, or other similar organization that makes occasional sales or engages in fundraising projects that are performed exclusively by the members where the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic, and service activities of the organization is also exempt.[30]

Regulatory Provisions

State law also regulates the issuance of local business tax receipts to certain individuals or businesses.[31] Section 205.194, F.S., provides that any person applying for or renewing a local business tax receipt to practice any profession or engage in or manage any business or occupation regulated by the Department of Business and Professional Regulation, the Florida Supreme Court, or any other state regulatory agency, including any board or commission thereof, must exhibit an active state certificate, registration, or license, or proof of copy of the same, before such local receipt may be issued.

State law provides similar requirements for production of evidence of appropriate licensure prior to issuance of a local business tax receipt for pharmacies and pharmacists,[32] assisted living facilities,[33] pest control,[34] health studios,[35] sellers of travel,[36] telemarketing businesses,[37] and household moving services.[38] However, out-of-state businesses that are conducting operations within the state solely to perform disaster-related work or emergency-related work during a disaster-response period are not subject to registration, filing, or remittance requirements, including requirements for local business taxes.[39]

[22] Section 205.022(1), F.S.
[23] Section 205.063, F.S.
[24] Section 205.064, F.S.
[25] Section 205.065, F.S.
[26] Section 205.066, F.S.
[27] Section 205.162, F.S.
[28] Section 205.171, F.S.
[29] Section 205.193, F.S.
[30] Section 205.192, F.S.
[31] Sections 205.194, 205.196, 205.1965, 205.1967, 205.1969, 205.1971, 205.1973, and 205.1975, F.S.
[32] Section 205.196, F.S.
[33] Section 205.1965, F.S.
[34] Section 205.1967, F.S.
[35] Section 205.1969, F.S.
[36] Section 205.1971, F.S.
[37] Section 205.1973, F.S.
[38] Section 205.1975, F.S.
[39] Section 213.055, F.S.

Distribution of Revenues

The revenues derived from the business tax imposed by county governments, exclusive of the costs of collection and credit given for municipal business taxes, are apportioned between the county's unincorporated area and the incorporated municipalities located within the county by a ratio derived by dividing their respective populations by the county's total population.[40] Within 15 days following the month of receipt, the apportioned revenues are sent to each governing authority; however, this provision does not apply to counties that have established a new rate structure pursuant to s. 205.0535, F.S.[41]

Authorized Uses of Revenues

The tax proceeds are considered general revenue for the county or municipality. Additionally, the county business tax proceeds may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.[42] The proceeds of the additional county business tax imposed pursuant to s. 205.033(6), F.S., are distributed by the county's governing body to a designated organization or agency for the purpose of implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.[43]

Total Revenues Collected

According to a report published by the Office of Economic and Demographic Research (EDR), in Fiscal Year 2013-14, 33 counties collected a total of $27 million of local business tax revenue. In that same fiscal year, 292 municipalities collected a total of $143 million of local business tax revenue.[44]

Certain local governments receive a sizable amount of revenue from the local business tax. At least seven municipalities received over $7 million in revenue from the local business tax including:

- Panama City—$8.6 million;
- Panama City Beach—$10 million;
- Jacksonville—$7 million;
- Tampa—$10.2 million;
- Hialeah—$9.3 million;
- Miami—$7.6 million; and
- Orlando—$8.1 million.

Miami-Dade County received $11.6 million in revenue from the local business tax.

[40] Section 205.033(4), F.S.
[41] Section 205.033(5), F.S.
[42] Section 205.033(7), F.S.
[43] Section 205.033(6)(b), F.S.
[44] Office of Economic and Demographic Research, 2014 County and Municipal Revenues for the Local Business Tax, *available at* http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm (last visited April 6, 2017).

III. Effect of Proposed Changes:

Section 1 creates s. 205.055, F.S., to provide an exemption from the local business tax and any subsequent fees for the following individuals and businesses that meet the listed criteria below on or after July 1, 2017:

- A veteran, the spouse of a veteran, or the surviving spouse of a veteran;
- The spouse of an active military servicemember who has relocated to the county or municipality pursuant to a permanent change of station order;
- An individual who is receiving public assistance, as that term is defined in s. 409.2554, F.S.;[45]
- An individual whose household income is less than 130 percent of the federal poverty level based on the current year's federal poverty guidelines; and
- A business whose controlling interest is owned by an exempt person.

In order to be entitled to the exemption, the individual must complete and sign, under penalty of perjury, a Request for Fee Exemption, furnished by the local governing authority, and must provide written documentation in support of his or her request.

Section 2 repeals s. 205.171, F.S., relating to exemptions from the local business tax for disabled veterans of any war or their unremarried spouses.

Section 3 provides that this act shall take effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of Art. VII, s. 18 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 mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was $2 million or less.[46,47,48]

The mandates provision of Art. VII, s. 18 of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by exempting certain persons from the local business tax. This bill does not appear to qualify under any exemption or

[45] Section 409.2554(8), F.S., defines "public assistance" to mean money assistance paid on the basis of Title IV-E and Title XIX of the Social Security Act, temporary cash assistance, or food assistance benefits received on behalf of a child under 18 years of age who has an absent parent.
[46] FLA. CONST. art. VII, s. 18(d).
[47] 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 April 6, 2017).
[48] 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 April 6, 2017).

exception. Therefore, the bill may qualify as a mandate, requiring a two-thirds vote of the membership of each chamber of the Legislature.

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 business tax revenues by $23.2 million beginning in Fiscal Year 2017-2018, assuming the bill language exempts spouses of veterans.

B. Private Sector Impact:

Veterans, spouses of veterans, surviving spouses of veterans, certain spouses of active servicemembers, and low-income individuals will be exempt from the local business tax, if they complete and sign a Request for Fee Exemption.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 205.055 of the Florida Statutes.

This bill repeals section 205.171 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 Finance and Tax on April 13, 2017:
The committee substitute:

- Includes spouses of veterans in the list of exempt individuals; and
- Specifies that businesses are also exempt if the controlling interest thereof is owned by an exempt person.

CS by Community Affairs on March 22, 2017:
Removes provisions that:

- Prohibited municipalities and counties from levying a local business tax that was not adopted before a certain date;
- Limited the rate of the local business tax; and
- Set maximum limits of certain transfer fees.

B. Amendments:

None.


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Proposed Committee Substitute by the Committee on Appropriations (Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to local business taxes; creating s. 205.055, F.S.; providing an exemption from the business tax and certain fees to veterans, spouses and surviving spouses of veterans, spouses of certain active military servicemembers, and specified low-income individuals; providing requirements for applying for the exemption; providing the exemption for a business if an exempt individual owns a controlling interest in such business; repealing s. 205.171, F.S., relating to exemptions allowed to disabled veterans of any war or their unremarried spouses; providing an effective date.

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

Section 1. Section 205.055, Florida Statutes, is created to read:

205.055 Exemptions; veterans, spouses of veterans and certain servicemembers, and low-income individuals.—A veteran, the spouse of a veteran, or the surviving spouse of a veteran; the spouse of an active military servicemember who has relocated to the county or municipality pursuant to a permanent change of station order; an individual who is receiving public assistance, as defined in s. 409.2554; or an individual whose household income is below 130 percent of the federal poverty level based on the current year's federal poverty guidelines is entitled to


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576-03803-17

an exemption from the business tax and any fees imposed under this chapter, if such individual completes and signs, under penalty of perjury, a Request for Fee Exemption to be furnished by the local governing authority and provides written documentation in support of his or her request. If an exempt individual owns a controlling interest in a business, the business is exempt.

Section 2. Section 205.171, Florida Statutes, is repealed.

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/SB 330
INTRODUCER:	Community Affairs Committee and Senator Steube
SUBJECT:	Local Business Taxes
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Fav/CS**
2.	Babin	Diez-Arguelles	AFT	**Recommend: Fav/CS**
3.	Babin	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 330 provides an exemption from the local business tax for:

- Veterans.
- Surviving spouses of veterans.
- Certain spouses of active servicemembers.
- Individuals who receive public assistance.
- Low-income individuals.

Qualifying individuals must complete and sign a Request for Fee Exemption.

The bill is effective upon becoming a law.

The Revenue Estimating Conference estimates that the bill will reduce local business tax revenues by $23.2 million beginning in Fiscal Year 2017-2018, with a recurring reduction of $23.2 million.

This 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:

Local Business Tax

The local business tax, authorized in ch. 205, F.S., means the fees charged and the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.[1] Counties and municipalities may levy a business tax.[2]

Eligibility Requirements

County and municipal governments are eligible to levy, by appropriate resolution or ordinance, a business tax for the privilege of engaging in or managing any business, profession, or occupation within their jurisdictions. If adopted by ordinance prior to January 1, 1995, a county, as defined in s. 125.011(1), F.S., (i.e., Miami-Dade County) or any adjacent county (i.e., Broward, Collier, and Monroe counties) is authorized to levy and collect an additional business tax up to 50 percent of the appropriate business tax imposed under s. 205.033(1), F.S.[3]

Administrative Procedures

To levy a business tax, the governing body must first give at least 14 days of public notice between the first and last reading of the resolution or ordinance by publishing a notice in a newspaper of general circulation within its jurisdiction.[4] The public notice must contain the proposed classifications and rates applicable to the business tax.[5] A number of other conditions for levy are imposed on counties and municipalities.[6]

For purposes of ch. 205, F.S., the terms "business," "profession," and "occupation" do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in the state.[7] These institutions are more particularly defined and limited in statute.[8] The term "receipt" means the document that is issued by the local governing authority which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of ch. 205, F.S., relating to the business tax.[9]

The governing body of a municipality that levies the tax may request that the county in which the municipality is located issue the municipal receipt and collect the tax.[10] The governing body of a county that levies the tax may request that municipalities within the county issue the county

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[5] *Id.*
[6] Sections 205.033 and 205.043, F.S.
[7] Section 205.022(1), F.S.
[8] *Id.*
[9] Section 205.022(2), F.S.
[10] Section 205.045, F.S.

receipt and collect the tax.[11] However, before any local government issues any business receipts on behalf of another local government, appropriate agreements must be entered into by the affected local governments.[12] All business tax receipts are sold by the appropriate tax collector beginning July 1 of each year.[13] The taxes are due and payable on or before September 30 of each year, and the receipts expire on September 30 of the succeeding year.[14] In several situations, administrative penalties are also imposed.[15]

A county or municipality that has not adopted a business tax ordinance or resolution may adopt a business tax ordinance.[16] The tax rate structure and classifications in the adopted ordinance must be reasonable and based upon the rate structure and classifications prescribed in ordinances adopted by adjacent local governments that have implemented s. 205.0535, F.S.[17] If no adjacent local government has implemented s. 205.0535, F.S., or if the governing body of the county or municipality finds that the rate structures or classifications of adjacent local governments are unreasonable, then an alternative method is authorized. In such a case, the rate structure or classifications prescribed in the ordinance of the local government seeking to impose the tax may be based upon those prescribed in ordinances adopted by local governments that have implemented s. 205.0535, F.S., in counties or municipalities that have a comparable population.[18]

Prior to October 1, 2008, any municipality that adopted by ordinance a local business tax after October 1, 1995, could, by ordinance, reclassify businesses, professions, and occupations and establish new rate structures, provided certain conditions were met. If such conditions were met, counties and municipalities could, every other year thereafter, increase or decrease by ordinance the rates of business taxes by up to 5 percent. Any subsequent increase must be enacted by at least a majority plus one vote of the governing body.[19] A county or municipality is not prohibited from decreasing or repealing any authorized local business tax. The governing body may adopt an ordinance by majority vote that repeals a local business tax or establishes new rates that decrease local business taxes and do not result in an increase in local business taxes for a taxpayer without having to establish an equity study commission.[20]

Exemptions

State law exempts, or allows local governments to exempt, certain individuals from all or some portion of local business taxes.[21] Customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions are excluded from the definition of "business," "profession," and "occupation" and are thereby excluded from

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[19] Section 205.0535(4), F.S.
[20] Section 205.0535(5), F.S.
[21] Sections 205.054, 205.063, 205.064, 205.065, 205.066, 205.067, 205.162, 205.171, 205.191, 205.192, and 205.193, F.S.

paying local business taxes.[22] The delivery and transportation of tangible personal property by a business that is otherwise required to pay a local business tax may not be charged a separate local business tax for such delivery or transportation service.[23] There are also exemptions for persons engaged in specified farming activities,[24] certain nonresident persons regulated by the Department of Business and Professional Regulation,[25] certain employees of businesses that are required to pay a local business tax,[26] certain disabled persons, the elderly, and widows with minor dependents,[27] disabled veterans of any war or their unremarried spouses,[28] and certain mobile home setup operations.[29] A charitable, religious, fraternal, youth, civic, service, or other similar organization that makes occasional sales or engages in fundraising projects that are performed exclusively by the members where the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic, and service activities of the organization is also exempt.[30]

Regulatory Provisions

State law also regulates the issuance of local business tax receipts to certain individuals or businesses.[31] Section 205.194, F.S., provides that any person applying for or renewing a local business tax receipt to practice any profession or engage in or manage any business or occupation regulated by the Department of Business and Professional Regulation, the Florida Supreme Court, or any other state regulatory agency, including any board or commission thereof, must exhibit an active state certificate, registration, or license, or proof of copy of the same, before such local receipt may be issued.

State law provides similar requirements for production of evidence of appropriate licensure prior to issuance of a local business tax receipt for pharmacies and pharmacists,[32] assisted living facilities,[33] pest control,[34] health studios,[35] sellers of travel,[36] telemarketing businesses,[37] and household moving services.[38] However, out-of-state businesses that are conducting operations within the state solely to perform disaster-related work or emergency-related work during a disaster-response period are not subject to registration, filing, or remittance requirements, including requirements for local business taxes.[39]

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[23] Section 205.063, F.S.
[24] Section 205.064, F.S.
[25] Section 205.065, F.S.
[26] Section 205.066, F.S.
[27] Section 205.162, F.S.
[28] Section 205.171, F.S.
[29] Section 205.193, F.S.
[30] Section 205.192, F.S.
[31] Sections 205.194, 205.196, 205.1965, 205.1967, 205.1969, 205.1971, 205.1973, and 205.1975, F.S.
[32] Section 205.196, F.S.
[33] Section 205.1965, F.S.
[34] Section 205.1967, F.S.
[35] Section 205.1969, F.S.
[36] Section 205.1971, F.S.
[37] Section 205.1973, F.S.
[38] Section 205.1975, F.S.
[39] Section 213.055, F.S.

Distribution of Revenues

The revenues derived from the business tax imposed by county governments, exclusive of the costs of collection and credit given for municipal business taxes, are apportioned between the county's unincorporated area and the incorporated municipalities located within the county by a ratio derived by dividing their respective populations by the county's total population.[40] Within 15 days following the month of receipt, the apportioned revenues are sent to each governing authority; however, this provision does not apply to counties that have established a new rate structure pursuant to s. 205.0535, F.S.[41]

Authorized Uses of Revenues

The tax proceeds are considered general revenue for the county or municipality. Additionally, the county business tax proceeds may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.[42] The proceeds of the additional county business tax imposed pursuant to s. 205.033(6), F.S., are distributed by the county's governing body to a designated organization or agency for the purpose of implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.[43]

Total Revenues Collected

According to a report published by the Office of Economic and Demographic Research (EDR), in Fiscal Year 2013-14, 33 counties collected a total of $27 million of local business tax revenue. In that same fiscal year, 292 municipalities collected a total of $143 million of local business tax revenue.[44]

Certain local governments receive a sizable amount of revenue from the local business tax. At least seven municipalities received over $7 million in revenue from the local business tax including:

- Panama City—$8.6 million;
- Panama City Beach—$10 million;
- Jacksonville—$7 million;
- Tampa—$10.2 million;
- Hialeah—$9.3 million;
- Miami—$7.6 million; and
- Orlando—$8.1 million.

Miami-Dade County received $11.6 million in revenue from the local business tax.

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[44] Office of Economic and Demographic Research, 2014 County and Municipal Revenues for the Local Business Tax, *available at* http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm (last visited April 6, 2017).

III. Effect of Proposed Changes:

Section 1 creates s. 205.055, F.S., to provide an exemption from the local business tax and any subsequent fees for the following individuals who meet the listed criteria below on or after July 1, 2016:

- A veteran or the surviving spouse of a veteran of the United States Armed Forces;
- The spouse of an active military servicemember who has relocated to the county or municipality pursuant to a permanent change of station order;
- An individual who is receiving public assistance, as that term is defined in s. 409.2554, F.S.[45]; and
- An individual whose household income is less than 130 percent of the federal poverty level based on the current year's federal poverty guidelines.

In order to be entitled to the exemption, the individual must complete and sign, under penalty of perjury, a Request for Fee Exemption, furnished by the local governing authority, and must provide written documentation in support of his or her request.

Section 2 repeals s. 205.171, F.S., relating to exemptions from the local business tax for disabled veterans of any war or their unremarried spouses.

Section 3 provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of Art. VII, s. 18 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 mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was $2 million or less.[46,47,48]

The mandates provision of Art. VII, s. 18 of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by exempting certain persons from the local business tax. This bill does not appear to qualify under any exemption or

[45] Section 409.2554(8), F.S., defines "public assistance" to mean money assistance paid on the basis of Title IV-E and Title XIX of the Social Security Act, temporary cash assistance, or food assistance benefits received on behalf of a child under 18 years of age who has an absent parent.
[46] FLA. CONST. art. VII, s. 18(d).
[47] 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 April 6, 2017).
[48] 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 April 6, 2017).

exception. Therefore, the bill may qualify as a mandate, requiring a two-thirds vote of the membership of each chamber of the Legislature.

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 business tax revenues by $23.2 million beginning in Fiscal Year 2017-2018, assuming the bill language exempts spouses of veterans.

B. Private Sector Impact:

Veterans, spouses of veterans, certain spouses of active servicemembers, and low-income individuals will be exempt from the local business tax, if they complete and sign a Request for Fee Exemption.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill is not clear regarding the exemption for spouses of veterans. The bill exempts a "surviving spouse" of a veteran…. "*Surviving* spouse" is how Florida law typically describes the spouse of a veteran who has died.[49] If the sponsor's intent is to exempt the spouse of a living veteran, an amendment may be necessary.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 205.055 of the Florida Statutes.

This bill repeals section 205.171 of the Florida Statutes.

[49] *See generally* FLA. CONST. art. VII, s. 6(f); ss. 196.081 and 196.24, F.S.

IX. Additional Information:

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

CS by Community Affairs on March 22, 2017:
Removes provisions that:

- Prohibited municipalities and counties from levying a local business tax that was not adopted before a certain date;
- Limited the rate of the local business tax; and
- Set maximum limits of certain transfer fees.

B. Amendments:

None.

By the Committee on Community Affairs; and Senator Steube

578-02730-17 2017330c1

A bill to be entitled

An act relating to local business taxes; creating s. 205.055, F.S.; providing an exemption from the business tax, subject to certain conditions, to specified veterans, spouses of veterans and active servicemembers, and low-income individuals; repealing s. 205.171, F.S., relating to exemptions allowed disabled veterans of any war or their unremarried spouses; providing an effective date.

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

Section 1. Section 205.055, Florida Statutes, is created to read:

205.055 Exemptions; veterans, certain spouses, and low-income individuals.—On or after July 1, 2016, a veteran or the surviving spouse of a veteran of the United States Armed Forces; the spouse of an active military servicemember who has relocated to the county or municipality pursuant to a permanent change of station order; an individual who is receiving public assistance, as that term is defined in s. 409.2554; or an individual whose household income is less than 130 percent of the federal poverty level based on the current year's federal poverty guidelines is entitled to an exemption from the business tax and any fees imposed under this chapter, if such individual completes and signs, under penalty of perjury, a Request for Fee Exemption to be furnished by the local governing authority and provides written documentation in support of his or her request.

Section 2. Section 205.171, Florida Statutes, is repealed.

578-02730-17 2017330c1

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
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,

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)

4/25/2017
Meeting Date

Topic _____ Bill Number 330 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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.

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

4/25/2017 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 330

Meeting Date *Bill Number (if applicable)*

Topic Local Business Taxes *Amendment Barcode (if applicable)*

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street Phone (850) 681-0024

Street

Tallahassee, FL 32301 Email jorge@flapartners.com

City *State* *Zip*

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

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

Representing Opportunity Solutions Project

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 524
INTRODUCER:	Senators Steube and Simpson
SUBJECT:	Sales and Use Tax on Investigation and Detective Services
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gross	Diez-Arguelles	AFT	**Recommend: Favorable**
2.	Gross	Hansen	AP	**Favorable**

I. Summary:

SB 524 expressly exempts from the sales and use tax those fingerprint services that are part of the application to obtain a concealed weapons and concealed firearms license.

The Revenue Estimating Conference estimates this bill will not have a fiscal impact on state or local government revenues.

Under current law, fingerprint services performed by a law enforcement agency, the Department of Agriculture and Consumer Services, or an approved tax collector to obtain a concealed weapons or concealed firearms license are not taxable transactions.[1]

The bill takes effect July 1, 2017.

II. Present Situation:

Florida Sales and Use Tax

Section 212.05(1)(i)1., F.S., levies a tax on detective, burglar, and other protection services. The law provides that these services are performed by industries classified under the 2007 North American Industry Classification System (NAICS) codes 561611, 561612, 561613, and 561621. A business establishment is classified under one NAICS code based on the establishment's primary economic activity. Fingerprint services are classified under code 561611 along with detective agencies, private investigation services, lie detection services, and other like services.[2]

[1] *See* Florida Dep't of Revenue, *Technical Assistance Advisement No. 94(A)-035, Sales Tax – Whether FDLE Criminal History Check Fee of $8 is Subject to Sales Tax,* (Jun. 17, 1994), *available at* https://revenuelaw.floridarevenue.com/LawLibraryDocuments/1994/06/TAA-104246_c12bcdeb-4dc3-4000-96a3-078c66658e83.pdf (last visited Feb. 21, 2017).

[2] The United States Census Bureau, *North American Industry Classification System, 2007 NAICS Definition, 561611 Investigative Services, available at* http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561611&search=2007%20NAICS%20Search (last visited Feb. 14, 2017).

Concealed weapon and concealed firearm applicants are required by s. 790.06(5), F.S., to submit a full set of fingerprints administered by a law enforcement agency, the Division of Licensing of the Department of Agriculture and Consumer Services, or an approved tax collector, along with other personal identifying information required by federal law to process fingerprints.

Section 790.062, F.S., provides military members and veterans of the United States Armed Forces additional options to obtain fingerprint services; either by military provost or other military unit charged with law enforcement duties.

In 1994, the Department of Revenue issued a Technical Assistance Advisement (TAA) in response to a taxpayer requesting guidance on whether criminal history background check services provided by the Florida Department of Law Enforcement and required by state law are subject to sales tax. The department's answer was no, basing its decision on the fact that the background check, and the associated fee or charge, was mandated by the state.[3]

Further, fingerprint services provided by a law enforcement officer who is performing approved duties in his capacity as a law enforcement officer are not subject to sales tax.[4]

The Revenue Estimating Conference's impact analysis for this bill states that, "where the fingerprinting is performed by staff in the Tax Collector's office or by staff of the Department of Agriculture and Consumer Services, the fee is not a part of the sales price as it is a required governmental fee.[5]

License and Fingerprint Processing Fees

The table below displays the license fees for new and renewal applications, fingerprint processing fees, and additional statutorily defined fees a law enforcement agency or an approved tax collector may require if they perform these services.

Section 790.06, F.S., requires an applicant for a license to carry a concealed weapon to submit a full set of fingerprints administered by a law enforcement agency, the Division of Licensing of the Department of Agriculture and Consumer Services or an approved tax collector. If the applicant is a member or veteran of the United States Armed Forces, the fingerprinting may have been administered by a military provost or other military unit charged with law enforcement duties.[6]

[3] *See supra* note 1.
[4] Section 212.05(1)(i), F.S.
[5] Office of Economic and Demographic Research, Florida Legislature, *Revenue Estimating Impact Conference*, (Feb, 2017), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page161-163.pdf (last visited Mar 16, 2017).
[6] Section 790.062(2), F.S.

<table>
<tr><td>$60/$50</td><td>License fee: new applicant/renewal[7]</td></tr>
<tr><td>$42</td><td>Fingerprint processing fee through DACS or an approved tax collector.
Distribution:[8]
<table>
<tr><td>$15</td><td>Florida Department of Law Enforcement</td></tr>
<tr><td>$12</td><td>Federal Bureau of Investigation</td></tr>
<tr><td>$15</td><td>Licensing Trust Fund</td></tr>
</table></td></tr>
<tr><td>$35[9]</td><td>Fingerprint processing fee through a sheriff's office.[10]
Distribution:
<table>
<tr><td>$15</td><td>Florida Department of Law Enforcement</td></tr>
<tr><td>$12</td><td>Federal Bureau of Investigation</td></tr>
<tr><td colspan="2">Remainder received by sheriff's office.[11]</td></tr>
</table></td></tr>
<tr><td>$5</td><td>Sheriff's offices may charge a convenience fee of up to $5.[12]</td></tr>
<tr><td>$22/$12</td><td>Tax collector convenience fee: new applicant/renewal.[13]</td></tr>
</table>

III. Effect of Proposed Changes:

This bill expressly exempts from the sales and use tax fingerprint services as part of the application to obtain a concealed weapons and concealed firearms license.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[7] Section 790.06(5)(b), F.S.
[8] Email from Grace Lovett, Director, Office of Legislative Affairs, Florida Department of Agriculture and Consumer Services, (Feb. 13, 2017) (on file with the Senate Appropriations Subcommittee on Finance and Tax).
[9] Florida Department of Agriculture and Consumer Services, *Florida Concealed Weapon or Firearm License, Application Instructions and Chapter 790, Florida Statutes*, 8, (July, 2016), *available at* http://www.freshfromflorida.com/content/download/26365/504278/ConcealedWeaponLicenseApplicationInstructions.pdf (last visited Feb. 15, 2017).
[10] If an applicant chooses to have their fingerprint service provided at a sheriff's office, the applicant does not need to submit the $42 fingerprint service fee to DACS.
[11] Section 790.06(14), F.S., states that "[a]ll funds received by the sheriff pursuant to the provisions of [section 790.06, F.S.,] shall be deposited into the general revenue fund of the county and shall be budgeted to the sheriff."
[12] Section 790.06(6)(a), F.S.
[13] Section 790.0625, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates this bill will have no impact on state or local government revenues.

B. Private Sector Impact:

The exemption may clarify the exempt nature of fingerprint services as part of a license to carry a concealed weapon or concealed firearm.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 212.05(1)(i), 790.06, and 790.062.

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 Steube

23-00149-17 2017524__

A bill to be entitled

An act relating to the sales and use tax on investigation and detective services; amending ss. 212.05, 790.06, and 790.062, F.S.; providing that fingerprint services required for a license to carry a concealed weapon or firearm are not subject to the tax; providing an effective date.

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

Section 1. Paragraph (i) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(i)1. At the rate of 6 percent on charges for all:

a. Detective, burglar protection, and other protection services (NAICS National Numbers 561611, 561612, 561613, and 561621). Fingerprint services required under s. 790.06 or s. 790.062 are not subject to the tax. Any law enforcement officer, as defined in s. 943.10, who is performing approved duties as determined by his or her local law enforcement agency in his or her capacity as a law enforcement officer, and who is subject to

23-00149-17 2017524__

the direct and immediate command of his or her law enforcement agency, and in the law enforcement officer's uniform as authorized by his or her law enforcement agency, is performing law enforcement and public safety services and is not performing detective, burglar protection, or other protective services, if the law enforcement officer is performing his or her approved duties in a geographical area in which the law enforcement officer has arrest jurisdiction. Such law enforcement and public safety services are not subject to tax irrespective of whether the duty is characterized as "extra duty," "off-duty," or "secondary employment," and irrespective of whether the officer is paid directly or through the officer's agency by an outside source. The term "law enforcement officer" includes full-time or part-time law enforcement officers, and any auxiliary law enforcement officer, when such auxiliary law enforcement officer is working under the direct supervision of a full-time or part-time law enforcement officer.

b. Nonresidential cleaning, excluding cleaning of the interiors of transportation equipment, and nonresidential building pest control services (NAICS National Numbers 561710 and 561720).

2. As used in this paragraph, "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

3. Charges for detective, burglar protection, and other protection security services performed in this state but used outside this state are exempt from taxation. Charges for detective, burglar protection, and other protection security

services performed outside this state and used in this state are subject to tax.

4. If a transaction involves both the sale or use of a service taxable under this paragraph and the sale or use of a service or any other item not taxable under this chapter, the consideration paid must be separately identified and stated with respect to the taxable and exempt portions of the transaction or the entire transaction shall be presumed taxable. The burden shall be on the seller of the service or the purchaser of the service, whichever applicable, to overcome this presumption by providing documentary evidence as to which portion of the transaction is exempt from tax. The department is authorized to adjust the amount of consideration identified as the taxable and exempt portions of the transaction; however, a determination that the taxable and exempt portions are inaccurately stated and that the adjustment is applicable must be supported by substantial competent evidence.

5. Each seller of services subject to sales tax pursuant to this paragraph shall maintain a monthly log showing each transaction for which sales tax was not collected because the services meet the requirements of subparagraph 3. for out-of-state use. The log must identify the purchaser's name, location and mailing address, and federal employer identification number, if a business, or the social security number, if an individual, the service sold, the price of the service, the date of sale, the reason for the exemption, and the sales invoice number. The monthly log shall be maintained pursuant to the same requirements and subject to the same penalties imposed for the keeping of similar records pursuant to this chapter.

Section 2. Paragraph (c) of subsection (5) of section 790.06, Florida Statutes, is amended to read:

790.06 License to carry concealed weapon or firearm.—

(5) The applicant shall submit to the Department of Agriculture and Consumer Services or an approved tax collector pursuant to s. 790.0625:

(c) A full set of fingerprints of the applicant administered by a law enforcement agency or the Division of Licensing of the Department of Agriculture and Consumer Services or an approved tax collector pursuant to s. 790.0625 together with any personal identifying information required by federal law to process fingerprints. Charges for fingerprint services under this paragraph are not subject to the sales tax on fingerprint services imposed in s. 212.05(1)(i).

Section 3. Subsection (2) of section 790.062, Florida Statutes, is amended to read:

790.062 Members and veterans of United States Armed Forces; exceptions from licensure provisions.—

(2) The Department of Agriculture and Consumer Services shall accept fingerprints of an applicant under this section administered by any law enforcement agency, military provost, or other military unit charged with law enforcement duties or as otherwise provided for in s. 790.06(5)(c). Charges for fingerprint services under this subsection are not subject to the sales tax on fingerprint services imposed in s. 212.05(1)(i).

Section 4. This act shall take effect July 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

March 21, 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 my bill, SB 524 – Sales and Use Tax on Investigation and Detective Services, has been referred to the Senate Appropriations Committee. This bill passed the Senate Subcommittee on Finance and Tax on March 21. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

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

Very respectfully yours,

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

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 732
INTRODUCER:	Health Policy Committee and Senator Steube
SUBJECT:	Physician Assistant Workforce Surveys
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Loe	Williams	AHS	**Recommend: Favorable**
3.	Loe	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 732 requires a physician assistant (PA) to complete a workforce survey as part of his or her biannual licensure renewal under chapter 458 or 459, Florida Statutes. The Department of Health (DOH) must report the data collected from the PA workforce surveys to the Board of Medicine and the Board of Osteopathic Medicine every two years.

The fiscal impact of the bill is indeterminate; however, any costs incurred by the DOH related to additional workload should be absorbed within existing resources.

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

II. Present Situation:

Physician Assistants

Chapter 458, F.S., sets forth the provisions for the regulation of the practice of allopathic medicine by the Board of Medicine (BOM). Chapter 459, F.S., sets forth the provisions for the regulation of the practice of osteopathic medicine by the Board of Osteopathic Medicine (BOOM). PAs are regulated by either the BOM or the BOOM, as applicable.

PAs are trained and required by statute to work under the supervision and control of allopathic physicians or osteopathic physicians.[1] The BOM and the BOOM have adopted rules that set out the general principles a supervising physician must use in developing the scope of practice of the PA under both direct[2] and indirect[3] supervision. These principles are required to recognize the diversity of both specialty and practice settings in which PAs are employed.[4]

PAs may perform services delegated by a supervising physician in accordance with the PA's education and training unless expressly prohibited under ch. 458, F.S., ch. 459, F.S., or by rules adopted under either chapter.[5] A supervising physician's decision to permit a PA to perform a task or procedure under direct or indirect supervision must be based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient. The supervising physician must be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.[6] Each physician or group of physicians supervising a licensed PA must be qualified in the medical areas in which the PA is to practice and must be individually and collectively liable for the acts and omissions of the PA.[7]

Licensure of PAs is overseen jointly by the BOM and BOOM through the Council on Physician Assistants.-Licensure as a PA requires that the individual:

- Is at least 18 years of age;
- Has passed a proficiency examination with an acceptable score established by the National Commission on Certification of Physician Assistants (NCCPA);[8]
- Has completed the DOH application form, remitted an application fee, and included the following:
  - A certificate of completion of a BOM or BOOM approved PA program;
  - Acknowledgment of any prior felony convictions;
  - Acknowledgement of any revocations or denials of licensure in any state; and
  - A copy of PA training course descriptions and transcripts in pharmacotherapy, if prescribing privileges are desired.[9]

Renewal of a PA's license is biennial and contingent upon completion of a certain type and quantity of continuing medical education requirements. A PA with delegated prescribing authority must submit a signed affidavit that he or she has completed a minimum of ten

[1] Sections 458.347(4) and 459.022(4), F.S.
[2] "Direct supervision" requires the physician to be on the premises and immediately available. (*See* Rules 64B8-30.001(4) and 64B15-6.001(4), F.A.C.).
[3] "Indirect supervision" refers to the easy availability of the supervising physician to the PA, which includes the ability to communicate by telecommunications, and requires the physician to be within reasonable physical proximity. (*See* Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.)
[4] Sections 458.347(4)(a) and 459.002(4)(a), F.S.
[5] Section 458.347(4)(h) and 459.022(4)(g), F.S.
[6] Rules 64B8-30.012(2) and 64B15-6.010(2), F.A.C.
[7] Sections 458.347(3) and 459.022(3), F.S.
[8] If an applicant does not hold a current certificate issued by the NCCPA, and has not actively practiced within the immediately preceding four years, the applicant must retake and successfully complete the entry-level examination of the NCCPA to be eligible for licensure.
[9] Sections 458.347(7)(a) and 459.022(7)(a), F.S.

continuing medical education hours in the specialty practice in which the PA has prescriptive privileges.[10]

Physician Workforce Surveys

There is currently no statutory requirement for the DOH to develop or administer, or for a PA to complete, a survey before he or she can renew a license. However, physicians licensed under the same chapters as PAs are required to complete a survey at licensure renewal.[11] The DOH may issue a nondisciplinary citation if the physician does not complete the survey at least 90 days after renewal. The citation must notify the physician that his or her license will not be renewed in any subsequent renewal period unless the survey is completed.[12]

III. Effect of Proposed Changes:

PA Workforce Survey as a Renewal Requirement

The bill requires a PA, as a condition of licensure renewal, to complete a workforce survey, which will be administered in the same manner as the physician's survey,[13] and must contain the following:[14]

- Licensee information, including, but not limited to:
  - Frequency and geographic location of practice within the state;
  - Practice setting;
  - Percentage of time spent in direct patient care;
  - Anticipated change to license or practice status; and
  - Areas of specialty or certification.
- Availability and trends relating to critically needed services, including, but not limited to:
  - Obstetric care and services, including incidents of deliveries;
  - Radiological services, particularly performance of mammograms and breast-imaging services;
  - Physician services for hospital emergency departments and trauma centers, including on-call hours; and
  - Other critically needed specialty areas as determined by the department.

The information submitted must include a statement that the information provided is true and accurate to the best of the PA's knowledge and the submission does not contain any knowingly false information.[15]

The bill requires the DOH to administer the PA survey in the same manner as the physician survey. Accordingly, the DOH must:

- Include in PA licensure renewals a notice that the PA survey must be completed prior to renewal of the license, and that the DOH may not renew the license until the survey is completed;

[10] Section 458.347(4)(e)3., F.S., and s. 459.022(4)(e)3., F.S.
[11] *See* s. 458.3191, F.S.
[12] Sections 458.3191 and 459.0081, F.S.
[13] See sections 458. 319 and 459.0081, F.S.
[14] *Id.*
[15] *Id.*

- Issue a nondisciplinary citation to PAs who do not complete the survey within 90 days after filing an application for renewal; and
- Include in the nondisciplinary citation notice that the PA's license will not be renewed unless the survey is completed.

Beginning July 1, 2018, and every two years thereafter, the DOH must report the survey data to the BOM and BOOM. The DOH has been granted rulemaking authority to implement the survey process.

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:

The fiscal impact of the bill is indeterminate. However, any costs incurred by the DOH related to additional workload should be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires PAs licensed under chapter 458 and 459, F.S., to provide personal identifying information without making that information confidential and exempt from disclosure. A public

records exemption exists for records containing personal identifying information that the DOH receives in response to the mandatory workforce survey for physicians.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 458.347 and 459.022.

IX. Additional Information:

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

CS by Health Policy on April 3, 2017
The CS:

- Deletes specific components of a PA survey, and instead requires the PA workforce survey to contain the same information required by physicians and be administered in the same manner;
- Deletes reference to designated supervising physician or PAs; and
- Deletes changes to the composition of the Council on Physician Assistants.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Steube

588-03384-17 2017732c1

A bill to be entitled

An act relating to physician assistant workforce surveys; amending ss. 458.347 and 459.022, F.S.; requiring that a physician assistant license renewal include the submission of a physician assistant workforce survey; requiring the Department of Health to report the data collected from such surveys to the boards; providing rulemaking authority; providing an effective date.

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

Section 1. Paragraph (b) of subsection (7) of section 458.347, Florida Statutes, is amended to read:

458.347 Physician assistants.—

(7) PHYSICIAN ASSISTANT LICENSURE.—

(b)1. The license must be renewed biennially. Each renewal must include:

a.~~1.~~ A renewal fee not to exceed $500 as set by the boards.

b.~~2.~~ Acknowledgment of no felony convictions in the previous 2 years.

c. A completed physician assistant workforce survey, which shall be administered in the same manner as the physician survey established in s. 458.3191 and must contain the same information required in s. 458.3191(1) and (2).

2. Beginning July 1, 2018, and every 2 years thereafter, the department shall report the data collected from the physician assistant workforce surveys to the boards.

3. The department shall adopt rules to implement this

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

588-03384-17 2017732c1

paragraph.

Section 2. Paragraph (b) of subsection (7) of section 459.022, Florida Statutes, is amended to read:

459.022 Physician assistants.—

(7) PHYSICIAN ASSISTANT LICENSURE.—

(b)1. The licensure must be renewed biennially. Each renewal must include:

a.~~1.~~ A renewal fee not to exceed $500 as set by the boards.

b.~~2.~~ Acknowledgment of no felony convictions in the previous 2 years.

c. A completed physician assistant workforce survey, which shall be administered in the same manner as the physician survey established in s. 459.0081 and must contain the same information required in s. 459.0081(1) and (2).

2. Beginning July 1, 2018, and every 2 years thereafter, the department shall report the data collected from the physician assistant workforce surveys to the boards.

3. The department shall adopt rules to implement this paragraph.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
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 18, 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 my bill, CS/SB 732: Physician Assistant Workforce Surveys, has been referred to the Senate Appropriations Committee. This bill has passed the Senate Health Policy committee, as well as the Appropriations Subcommittee for Health and Human Services. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

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

Very respectfully yours,

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)

4/25/17
Meeting Date

732
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic PA's

Name Corinne Mixon

Job Title Lobbyist

Address 119 S Monroe
Street

Phone

City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Physician Assistants

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)

4/25/2017
Meeting Date

Topic _____ Bill Number 732 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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.

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 360 (362598)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Pre- K- 12 Education) and Senators Stargel and Grimsley
SUBJECT:	Middle School Study
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Benvenisty	Graf	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 360 requires the Florida Department of Education (DOE) to issue a competitive bid for a private vendor to conduct a comprehensive study of states with high-performing students in grades 6 through 8 in reading and mathematics, based on the states' performance on the National Assessment of Educational Progress. The DOE must submit a report on the findings of the study and make recommendations to improve middle school student performance to the Governor, the State Board of Education, the President of the Senate, and the Speaker of the House of Representatives by December 2017.

Specifically, the study must review, at a minimum:

- Academic expectations and instructional strategies.
- Attendance policies and student mobility issues.
- Teacher quality.
- Middle school administrator leadership and performance.
- Parental and community involvement.

The bill requires the DOE to issue a competitive solicitation for a contract with private vendors to conduct the study. However, neither the bill nor SB 2500, the Senate General Appropriations Act for Fiscal Year 2017-2018, appropriates funds for the study.

The bill takes effect July 1, 2017.

II. Present Situation:

Florida's student assessment program for public schools specifies school district and student participation in certain state and national assessments.[1]

Public School Student Assessment Program

The primary purpose of the student assessment program is to provide student academic achievement and learning gains data to students, parents, teachers, school administrators and district staff.[2] The program must be designed to:[3]

- Assess the achievement level and annual learning gains of each student in English Language Arts (ELA) and mathematics and achievement level in all other subjects assessed.
- Provide data for making decisions regarding school accountability, recognition, and improvement of operations and management.
- Identify the educational strengths and needs of students and the readiness of students to be promoted to the next grade level or to graduate from high school.
- Assess how well educational goals and curricular standards are met at the school, district, state, national, and international levels.
- Provide information to aid in the evaluation and development of educational programs and policies.
- Provide instructional personnel with information on student achievement of standards and benchmarks in order to improve instruction.

Statewide, Standardized Assessment Program

The Commissioner of Education (commissioner) is required to design and implement a statewide, standardized assessment program aligned to the core curricular content established in the Next Generation Sunshine State Standards.[4]

The statewide, standardized assessment program consists of:

- Statewide, standardized comprehensive assessments for:[5]
  - ELA;
  - Mathematics; and
  - Science.

[1] Section 1008.22(2)-(3), F.S.
[2] Section 1008.22(1), F.S. The data is to be used by districts to improve instruction; by students, parents, and teachers to guide learning objectives; by education researchers to assess national and international comparison data; and by the public to assess the cost benefit of the expenditure of taxpayer dollars. *Id.*
[3] *Id.*
[4] Section 1008.22(3), F.S. The Next Generation Sunshine State Standards (NGSSS) establish the core content of the curricula to be taught in the state and specify the core content knowledge and skills that K-12 public school students are expected to acquire.
[5] Section 1008.22(3)(a), F.S. Federal law requires students to be tested in reading or language arts and mathematics in each of grades 3 through 8 and not less than once in grades 10 through12. With respect to science, students must be tested once during grades 3 through 5, grades 6 through 9, and grades 10 through 12. 20 U.S.C. s. 6311(b)(3). The Florida Department of Education posts the Statewide Assessment Schedule on its website. Florida Department of Education, *Florida Statewide Assessment Program 2016-2017 Schedule, available at* https://info.fldoe.org/docushare/dsweb/Get/Document-7514/dps-2015-175a.pdf.

- End-of-Course (EOC) assessments for:[6]
  - Civics;
  - United States History;
  - Algebra I;
  - Algebra II;[7]
  - Geometry; and
  - Biology I.

All statewide, standardized assessments and EOC assessments use scaled scores and achievement levels.[8] Achievement levels range from 1 through 5, with level 1 being the lowest achievement level, level 5 being the highest achievement level, and level 3 indicating satisfactory performance on an assessment.[9]

Trends in student performance on statewide, standardized reading, ELA, and mathematics assessments for the middle grades are indicated in the tables below. In the 2014-15 academic year, the Florida Standards Assessment (FSA) in ELA and Mathematics replaced the FCAT 2.0 assessments.

Reading and English Language Arts

The following table shows performance trends of students in grade 6 scoring at each achievement level on the statewide, standardized Reading and ELA assessment, as applicable.[10]

Performance of Students in Grade 6 on Statewide, Standardized Reading or ELA Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0 Reading	17%	24%	29%	19%	10%
2011-12	FCAT 2.0 Reading	19%	24%	28%	19%	10%
2012-13	FCAT 2.0 Reading	19%	23%	28%	20%	10%
2013-14	FCAT 2.0 Reading	16%	23%	28%	20%	11%
2014-15	FSA ELA	24%	26%	22%	21%	8%
2015-16	FSA ELA	22%	26%	22%	21%	8%

The following table shows performance trends of students in grade 7 scoring at each achievement level on the statewide, standardized Reading and ELA assessment, as applicable.[11]

[6] Section 1008.22(3)(b), F.S.
[7] Students are not required to take the Algebra II EOC assessment. However, a student who selects Algebra II must take the Algebra II EOC assessment. Section 1003.4282(3)(b), F.S.
[8] Section 1008.22(3)(e), F.S. and Rule 6A-1.09422, F.A.C.
[9] *Id.*
[10] Email, Florida Department of Education (Feb. 28, 2017).
[11] *Id.*

Performance of Students in Grade 7 on Statewide, Standardized Reading or ELA Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0 Reading	18%	24%	29%	19%	10%
2011-12	FCAT 2.0 Reading	18%	25%	29%	19%	11%
2012-13	FCAT 2.0 Reading	20%	23%	27%	19%	11%
2013-14	FCAT 2.0 Reading	21%	23%	27%	19%	11%
2014-15	FSA ELA	25%	24%	23%	18%	11%
2015-16	FSA ELA	27%	24%	22%	17%	10%

The following table shows performance trends of students in grade 8 scoring at each achievement level on the statewide, standardized Reading and ELA assessment, as applicable.[12]

Performance of Students in Grade 8 on Statewide, Standardized Reading or ELA Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0 Reading	19%	28%	26%	17%	10%
2011-12	FCAT 2.0 Reading	17%	27%	26%	18%	12%
2012-13	FCAT 2.0 Reading	17%	27%	26%	19%	11%
2013-14	FCAT 2.0 Reading	18%	25%	25%	19%	12%
2014-15	FSA ELA	23%	22%	26%	18%	11%
2015-16	FSA ELA	22%	21%	26%	19%	12%

Mathematics

The following table shows performance trends of students in student in grade 6 scoring at each achievement level on the statewide, standardized mathematics assessment.[13]

Performance of Students in Grade 6 on Statewide, Standardized Mathematics Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0	22%	24%	26%	18%	9%
2011-12	FCAT 2.0	23%	25%	25%	18%	10%
2012-13	FCAT 2.0	23%	24%	25%	18%	10%
2013-14	FCAT 2.0	23%	23%	24%	19%	11%
2014-15	FSA Math	26%	24%	23%	19%	8%
2015-16	FSA Math	26%	24%	23%	18%	8%

The following table shows performance trends of students in grade 7 scoring at each achievement level on the statewide, standardized mathematics assessment.[14]

[12] Email, Florida Department of Education (Feb. 28, 2017).
[13] *Id.*
[14] *Id.*

Performance of Students in Grade 7 on Statewide, Standardized Mathematics Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0	20%	24%	28%	18%	10%
2011-12	FCAT 2.0	20%	24%	27%	18%	10%
2012-13	FCAT 2.0	21%	24%	27%	18%	9%
2013-14	FCAT 2.0	21%	23%	28%	19%	9%
2014-15	FSA Math	25%	23%	27%	16%	9%
2015-16	FSA Math	27%	21%	27%	17%	9%

The following table shows performance trends of students in grade 8 scoring at each achievement level on the statewide, standardized mathematics assessment.[15]

Performance of Students in Grade 8 on Statewide, Standardized Mathematics Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0	22%	22%	30%	16%	10%
2011-12	FCAT 2.0	22%	21%	30%	16%	11%
2012-13	FCAT 2.0	25%	24%	31%	14%	6%
2013-14	FCAT 2.0	28%	25%	29%	12%	6%
2014-15	FSA Math	29%	26%	26%	12%	7%
2015-16	FSA Math	28%	24%	26%	12%	10%

National and International Assessments

In addition to the administration of statewide, standardized assessments, Florida school districts are required to participate in the National Assessment of Educational Progress (NAEP), or similar national or international assessments,[16] both for the national sample and for any state-by-state comparison programs, as directed by the commissioner.[17]

National Assessment of Educational Progress (NAEP)

The NAEP is the largest continuing, nationally representative assessment of students' knowledge and performance in a variety of subject areas, including but not limited to mathematics, reading, and writing.[18] The NAEP provides results on subject matter achievement for student populations, subgroups of student populations, and under certain circumstances, by selected large urban schools districts.[19] The NAEP in reading and mathematics is administered to a representative

[15] *Id.*

[16] International assessments allow Florida the opportunity to compare the performance of students in the United States to the performance of students in other countries around the world. Florida Department of Education, *National and International Assessments*, http://www.fldoe.org/accountability/assessments/national-international-assessments/ (last visited March 3, 2017). Individual student participation in the assessments is voluntary, and parents can choose to have their child (ren) not participate as stipulated in federal law. *Id.* Florida participates in the Progress in International Reading Literacy Study (PIRLS), Program for International Student Assessment (PISA), Trends in International Mathematics and Science Study (TIMSS), and the International Computer Information Literacy Study (ICILS). *Id.* Participation in a specific international assessment is not specified in Florida law. Section 1008.22(2), F.S.

[17] Section 1008.22(2), F.S.

[18] National Center for Education Statistics, *NAEP Overview*, https://nces.ed.gov/nationsreportcard/about/ (last visited March 3, 2017). Additional NAEP subject area assessments include science, the arts, civics, economics, geography, U.S History, and Technology and Engineering Literacy. *Id.*

[19] *Id.*

sample of students in grades 4 and 8 every two years.[20] The NAEP reports assessment results using three achievement levels:[21]

- Basic – A student achieving the Basic level demonstrates a partial mastery of prerequisite knowledge and skills that are fundamental for proficient work at each grade.
- Proficient – A student achieving the Proficient level demonstrates solid academic performance at the grade assessed.[22]
- Advanced – A student achieving the Advanced level demonstrates superior performance.

Participation in the NAEP provides a basis for comparing the knowledge and skills of Florida students with students in other states and with the nation as a whole.[23]

Reading

The following table shows performance trends of students in grade 8 scoring at each achievement level on the NAEP reading assessment compared to select states.[24]

Performance of Students in Grade 8 on NAEP Reading Assessment					
Year	Jurisdiction	Below Basic	At Basic	At Proficient	At Advanced
2015	National Public	25%	42%	29%	3%
	Florida	**25%**	**45%**	**28%**	**2%**
	Connecticut	18%	39%	37%	6%
	Massachusetts	17%	37%	39%	6%
	New Hampshire	15%	40%	40%	5%
	New Jersey	20%	39%	35%	6%
	Vermont	17%	39%	38%	6%
2013	National Public	23%	42%	31%	4%
	Florida	**23%**	**43%**	**30%**	**3%**
	Connecticut	17%	38%	39%	6%
	Massachusetts	16%	36%	40%	8%
	New Hampshire	16%	40%	38%	6%
	New Jersey	15%	39%	40%	7%
	Vermont	16%	39%	39%	6%
2011	National Public	25%	43%	29%	3%
	Florida	**27%**	**43%**	**27%**	**2%**
	Connecticut	17%	39%	38%	6%
	Massachusetts	16%	38%	40%	6%

[20] The Nation's Report Card, *Overview of the Nation's Report Card,* https://www.nationsreportcard.gov/faq.aspx (last visited March 3, 2017).
[21] National Center for Education Statistics, *NAEP Achievement Levels,* https://nces.ed.gov/nationsreportcard/achievement.aspx (last visited March 3, 2017).
[22] National Center for Education Statistics, *NAEP Achievement Levels,* https://nces.ed.gov/nationsreportcard/achievement.aspx (last visited March 3, 2017). Students reaching this level have demonstrated competency over challenging subject matter, including subject-matter knowledge, application of such knowledge to real world situations, and analytical skills appropriate to the subject matter. *Id.*
[23] Florida Department of Education, *National and International Assessments,* http://www.fldoe.org/accountability/assessments/national-international-assessments/ (last visited March 3, 2017).
[24] Email, Florida Department of Education (Feb. 28, 2017).

	New Hampshire	16%	44%	36%	4%
	New Jersey	16%	39%	39%	6%
	Vermont	18%	38%	39%	6%

The following table shows performance trends of students in grade 8 scoring at each achievement level on the NAEP mathematics assessment compared to select states.[25]

Performance of Students in Grade 8 on NAEP Mathematics Assessment					
Year	Jurisdiction	Below Basic	At Basic	At Proficient	At Advanced
2015	National Public	30%	38%	24%	8%
	Florida	**36%**	**38%**	**21%**	**5%**
	Massachusetts	19%	30%	33%	18%
	Minnesota	18%	34%	35%	13%
	New Hampshire	16%	37%	34%	12%
	New Jersey	21%	32%	30%	16%
	Washington	26%	35%	28%	11%
2013	National Public	27%	39%	26%	8%
	Florida	**30%**	**40%**	**24%**	**7%**
	Massachusetts	14%	31%	36%	18%
	Minnesota	17%	35%	33%	14%
	New Hampshire	16%	38%	33%	13%
	New Jersey	18%	34%	33%	16%
	Washington	21%	37%	30%	12%
2011	National Public	28%	39%	26%	8%
	Florida	**32%**	**40%**	**22%**	**4%**
	Massachusetts	14%	34%	36%	15%
	Minnesota	17%	36%	34%	13%
	New Hampshire	18%	38%	33%	11%
	New Jersey	18%	35%	33%	14%
	Washington	23%	36%	29%	11%

III. Effect of Proposed Changes:

The bill requires the Florida Department of Education (DOE) to issue a competitive bid for a private vendor to conduct a comprehensive study of states with high-performing students in grades 6 through 8 in reading and mathematics, based on the states' performance on the National Assessment of Educational Progress (NAEP). Specifically, the study must review, at a minimum:

- Academic expectation and instructional strategies, including:
  - Alignment of elementary and middle grades expectations with high school graduation requirements;
  - Research-based instructional practices in reading and mathematics, including those targeting low-performing and high-performing students;
  - The rigor of the curriculum and courses and the availability of accelerated courses;
  - The availability of student support services; and

[25] Email, Florida Department of Education (Feb. 28, 2017).

  - The sequence of courses and the prerequisites required for advanced courses;
  - The availability of before- and after-school programs, and efforts to address the summer gap between school years, including related funding; and
  - The availability of other academic and noncore classes, and electives.
- Attendance policies and student mobility issues.
- Teacher quality, including:
  - Teacher certification and recertification requirements;
  - Teacher preparedness to teach rigorous courses;
  - Teacher preparation specific to teaching middle school students;
  - Teacher recruitment and vacancy issues;
  - Staff development requirements and the availability of effective training;
  - Teacher collaboration and planning at the school and district levels; and
  - Student performance data collection and dissemination.
- Middle school administrator leadership and performance; and
- Parental and community involvement.

The comprehensive study will involve a review of factors that may contribute to student success. The findings and recommendations may assist the state in considering policy options to improve instruction and student performance in Florida based on a review of best practices of states with high-performing middle grade students in reading and mathematics. The bill indicates:

- Massachusetts, New Hampshire, Vermont, Connecticut, and New Jersey as the top performing states in the percentage of student in grades 4 and 8 who score at or above proficiency on the NAEP reading assessment; and
- Massachusetts, Minnesota, New Hampshire, New Jersey, and Washington as the top performing states in the percentage of student in grades 4 and 8 who score at or above proficiency on the NAEP mathematics assessment.

The bill requires the DOE to submit a report on the findings of the study, as well as recommendations to improve middle school student performance, to the Governor, State Board of Education, President of the Senate, and Speaker of the House of Representatives by December 2017. The bill provides for expiration of the provisions related to the comprehensive study of states after the submission of the final report.

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:

This bill requires the DOE to issue a competitive solicitation for a contract with private vendors to conduct the required study. However, neither the bill nor SB 2500, the Senate General Appropriations Act for Fiscal Year 2017-2018, appropriates funds for the study.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of the Florida law.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Pre-K-12 Education on April 13, 2017:
The committee substitute:

- Requires the Department of Education to issue a competitive solicitation for a contract with private vendors to conduct the required study rather than conduct the study themselves.
- Adds additional components to the study.

B. Amendments:

None.

940270

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment (with title amendment)

Between lines 92 and 93
insert:
Section 2. For the 2017-2018 fiscal year, the sum of $50,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Education to implement the provisions of this act.

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

940270

And the title is amended as follows:

Delete line 10

and insert:

expiration; providing an appropriation; providing an effective date.


362598

576-04122-17

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Pre-K - 12 Education)

A bill to be entitled

An act relating to a middle school study; requiring the Department of Education to solicit for a contract to conduct a comprehensive study of states with nationally recognized high-performing middle schools in reading and mathematics; specifying areas that must be reviewed in conducting the study; requiring a report to the Governor, the State Board of Education, and the Legislature by a specified time; providing for expiration; providing an effective date.

WHEREAS, since 1998, Florida has seen a continuing trend of reading improvement in the elementary school grades, which has led to an increase of 17 percentage points in reading at or above proficiency for 4th grade students on the National Assessment of Educational Progress, while Florida's 8th grade students achieved only an increase of 7 percentage points, and

WHEREAS, since 2003, Florida's 4th grade students have demonstrated an increase of 11 percentage points in mathematics at or above proficiency on the national assessment, while Florida's 8th grade students have shown an increase of only 3 percentage points, and

WHEREAS, since 2013, Florida's middle school students' proficiencies on the national assessment in both reading and mathematics have remained flat or decreased, and

WHEREAS, Massachusetts, New Hampshire, Vermont, Connecticut, and New Jersey are the top performing states in the


362598

576-04122-17

percentage of 4th and 8th grade students scoring at or above proficiency in reading on the national assessment, and

WHEREAS, Massachusetts, Minnesota, New Hampshire, New Jersey, and Washington are the top performing states in the percentage of 4th and 8th grade students scoring at or above proficiency in mathematics on the national assessment, and

WHEREAS, Florida's academic expectations for students in both reading and mathematics were raised in 2010 and 2014, and

WHEREAS, the performance of Florida's middle school students on the state assessments in reading has remained flat since the state's standards were raised, while their performance in mathematics increased slightly between 2015 and 2016, and

WHEREAS, success in the middle school grades is a predictor of academic success in high school and college and career readiness, NOW, THEREFORE,

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

Section 1. Comprehensive study on middle school performance.—

(1) The Department of Education shall issue a competitive solicitation for a contract with private vendors to conduct a comprehensive study of states with high-performing students in grades 6 through 8 in reading and mathematics, based on the states' performance on the National Assessment of Educational Progress.

(2) The study must include a review of at least all of the following:

(a) Academic expectations and instructional strategies, including:

576-04122-17

1. Alignment of elementary and middle grades expectations with high school graduation requirements;

2. Research-based instructional practices in reading and mathematics, including those targeting low-performing and high-performing students;

3. The rigor of the curriculum and courses and the availability of accelerated courses;

4. The availability of student support services;

5. The sequence of courses and the prerequisites required for advanced courses;

6. The availability of before- and after-school programs, and efforts to address the summer gap between school years, including related funding; and

7. The availability of other academic and noncore classes, and electives.

(b) Attendance policies and student mobility issues.

(c) Teacher quality, including:

1. Teacher certification and recertification requirements;

2. Teacher preparedness to teach rigorous courses;

3. Teacher preparation specific to teaching middle school students;

4. Teacher recruitment and vacancy issues;

5. Staff development requirements and the availability of effective training;

6. Teacher collaboration and planning at the school and district levels; and

7. Student performance data collection and dissemination.

(d) Middle school administrator leadership and performance.

(e) Parental and community involvement.

576-04122-17

(3) The department shall submit a report on the findings of the comprehensive study and make recommendations to improve middle school student performance to the Governor, the State Board of Education, the President of the Senate, and the Speaker of the House of Representatives by December 2017.

(4) This section expires upon submission of the final report.

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/SB 360
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Pre- K- 12 Education); and Senators Stargel and Grimsley
SUBJECT:	Middle School Study
DATE:	April 26, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Benvenisty	Graf	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 360 requires the Florida Department of Education (DOE) to issue a competitive bid for a private vendor to conduct a comprehensive study of states with high-performing students in grades 6 through 8 in reading and mathematics, based on the states' performance on the National Assessment of Educational Progress. The DOE must submit a report on the findings of the study and make recommendations to improve middle school student performance to the Governor, the State Board of Education, the President of the Senate, and the Speaker of the House of Representatives by December 2017.

Specifically, the study must review, at a minimum:

- Academic expectations and instructional strategies.
- Attendance policies and student mobility issues.
- Teacher quality.
- Middle school administrator leadership and performance.
- Parental and community involvement.

The bill appropriates $50,000 to the DOE to issue a competitive solicitation for a contract with private vendors to conduct the study.

The bill takes effect July 1, 2017.

II. Present Situation:

Florida's student assessment program for public schools specifies school district and student participation in certain state and national assessments.[1]

Public School Student Assessment Program

The primary purpose of the student assessment program is to provide student academic achievement and learning gains data to students, parents, teachers, school administrators and district staff.[2] The program must be designed to:[3]

- Assess the achievement level and annual learning gains of each student in English Language Arts (ELA) and mathematics and achievement level in all other subjects assessed.
- Provide data for making decisions regarding school accountability, recognition, and improvement of operations and management.
- Identify the educational strengths and needs of students and the readiness of students to be promoted to the next grade level or to graduate from high school.
- Assess how well educational goals and curricular standards are met at the school, district, state, national, and international levels.
- Provide information to aid in the evaluation and development of educational programs and policies.
- Provide instructional personnel with information on student achievement of standards and benchmarks in order to improve instruction.

Statewide, Standardized Assessment Program

The Commissioner of Education (commissioner) is required to design and implement a statewide, standardized assessment program aligned to the core curricular content established in the Next Generation Sunshine State Standards.[4]

The statewide, standardized assessment program consists of:

- Statewide, standardized comprehensive assessments for:[5]
  - ELA;
  - Mathematics; and
  - Science.

[1] Section 1008.22(2)-(3), F.S.
[2] Section 1008.22(1), F.S. The data is to be used by districts to improve instruction; by students, parents, and teachers to guide learning objectives; by education researchers to assess national and international comparison data; and by the public to assess the cost benefit of the expenditure of taxpayer dollars. *Id.*
[3] *Id.*
[4] Section 1008.22(3), F.S. The Next Generation Sunshine State Standards (NGSSS) establish the core content of the curricula to be taught in the state and specify the core content knowledge and skills that K-12 public school students are expected to acquire.
[5] Section 1008.22(3)(a), F.S. Federal law requires students to be tested in reading or language arts and mathematics in each of grades 3 through 8 and not less than once in grades 10 through12. With respect to science, students must be tested once during grades 3 through 5, grades 6 through 9, and grades 10 through 12. 20 U.S.C. s. 6311(b)(3). The Florida Department of Education posts the Statewide Assessment Schedule on its website. Florida Department of Education, *Florida Statewide Assessment Program 2016-2017 Schedule, available at* https://info.fldoe.org/docushare/dsweb/Get/Document-7514/dps-2015-175a.pdf.

- End-of-Course (EOC) assessments for:[6]
  - Civics;
  - United States History;
  - Algebra I;
  - Algebra II;[7]
  - Geometry; and
  - Biology I.

All statewide, standardized assessments and EOC assessments use scaled scores and achievement levels.[8] Achievement levels range from 1 through 5, with level 1 being the lowest achievement level, level 5 being the highest achievement level, and level 3 indicating satisfactory performance on an assessment.[9]

Trends in student performance on statewide, standardized reading, ELA, and mathematics assessments for the middle grades are indicated in the tables below. In the 2014-15 academic year, the Florida Standards Assessment (FSA) in ELA and Mathematics replaced the FCAT 2.0 assessments.

Reading and English Language Arts

The following table shows performance trends of students in grade 6 scoring at each achievement level on the statewide, standardized Reading and ELA assessment, as applicable.[10]

Performance of Students in Grade 6 on Statewide, Standardized Reading or ELA Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0 Reading	17%	24%	29%	19%	10%
2011-12	FCAT 2.0 Reading	19%	24%	28%	19%	10%
2012-13	FCAT 2.0 Reading	19%	23%	28%	20%	10%
2013-14	FCAT 2.0 Reading	16%	23%	28%	20%	11%
2014-15	FSA ELA	24%	26%	22%	21%	8%
2015-16	FSA ELA	22%	26%	22%	21%	8%

The following table shows performance trends of students in grade 7 scoring at each achievement level on the statewide, standardized Reading and ELA assessment, as applicable.[11]

[6] Section 1008.22(3)(b), F.S.
[7] Students are not required to take the Algebra II EOC assessment. However, a student who selects Algebra II must take the Algebra II EOC assessment. Section 1003.4282(3)(b), F.S.
[8] Section 1008.22(3)(e), F.S. and Rule 6A-1.09422, F.A.C.
[9] *Id.*
[10] Email, Florida Department of Education (Feb. 28, 2017).
[11] *Id.*

Performance of Students in Grade 7 on Statewide, Standardized Reading or ELA Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0 Reading	18%	24%	29%	19%	10%
2011-12	FCAT 2.0 Reading	18%	25%	29%	19%	11%
2012-13	FCAT 2.0 Reading	20%	23%	27%	19%	11%
2013-14	FCAT 2.0 Reading	21%	23%	27%	19%	11%
2014-15	FSA ELA	25%	24%	23%	18%	11%
2015-16	FSA ELA	27%	24%	22%	17%	10%

The following table shows performance trends of students in grade 8 scoring at each achievement level on the statewide, standardized Reading and ELA assessment, as applicable.[12]

Performance of Students in Grade 8 on Statewide, Standardized Reading or ELA Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0 Reading	19%	28%	26%	17%	10%
2011-12	FCAT 2.0 Reading	17%	27%	26%	18%	12%
2012-13	FCAT 2.0 Reading	17%	27%	26%	19%	11%
2013-14	FCAT 2.0 Reading	18%	25%	25%	19%	12%
2014-15	FSA ELA	23%	22%	26%	18%	11%
2015-16	FSA ELA	22%	21%	26%	19%	12%

Mathematics

The following table shows performance trends of students in student in grade 6 scoring at each achievement level on the statewide, standardized mathematics assessment.[13]

Performance of Students in Grade 6 on Statewide, Standardized Mathematics Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0	22%	24%	26%	18%	9%
2011-12	FCAT 2.0	23%	25%	25%	18%	10%
2012-13	FCAT 2.0	23%	24%	25%	18%	10%
2013-14	FCAT 2.0	23%	23%	24%	19%	11%
2014-15	FSA Math	26%	24%	23%	19%	8%
2015-16	FSA Math	26%	24%	23%	18%	8%

The following table shows performance trends of students in grade 7 scoring at each achievement level on the statewide, standardized mathematics assessment.[14]

[12] Email, Florida Department of Education (Feb. 28, 2017).
[13] *Id.*
[14] *Id.*

Performance of Students in Grade 7 on Statewide, Standardized Mathematics Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0	20%	24%	28%	18%	10%
2011-12	FCAT 2.0	20%	24%	27%	18%	10%
2012-13	FCAT 2.0	21%	24%	27%	18%	9%
2013-14	FCAT 2.0	21%	23%	28%	19%	9%
2014-15	FSA Math	25%	23%	27%	16%	9%
2015-16	FSA Math	27%	21%	27%	17%	9%

The following table shows performance trends of students in grade 8 scoring at each achievement level on the statewide, standardized mathematics assessment.[15]

Performance of Students in Grade 8 on Statewide, Standardized Mathematics Assessment						
Year	Test	Level 1	Level 2	Level 3	Level 4	Level 5
2010-11	FCAT 2.0	22%	22%	30%	16%	10%
2011-12	FCAT 2.0	22%	21%	30%	16%	11%
2012-13	FCAT 2.0	25%	24%	31%	14%	6%
2013-14	FCAT 2.0	28%	25%	29%	12%	6%
2014-15	FSA Math	29%	26%	26%	12%	7%
2015-16	FSA Math	28%	24%	26%	12%	10%

National and International Assessments

In addition to the administration of statewide, standardized assessments, Florida school districts are required to participate in the National Assessment of Educational Progress (NAEP), or similar national or international assessments,[16] both for the national sample and for any state-by-state comparison programs, as directed by the commissioner.[17]

National Assessment of Educational Progress (NAEP)

The NAEP is the largest continuing, nationally representative assessment of students' knowledge and performance in a variety of subject areas, including but not limited to mathematics, reading, and writing.[18] The NAEP provides results on subject matter achievement for student populations, subgroups of student populations, and under certain circumstances, by selected large urban schools districts.[19] The NAEP in reading and mathematics is administered to a representative

[15] *Id.*

[16] International assessments allow Florida the opportunity to compare the performance of students in the United States to the performance of students in other countries around the world. Florida Department of Education, *National and International Assessments*, http://www.fldoe.org/accountability/assessments/national-international-assessments/ (last visited March 3, 2017). Individual student participation in the assessments is voluntary, and parents can choose to have their child (ren) not participate as stipulated in federal law. *Id.* Florida participates in the Progress in International Reading Literacy Study (PIRLS), Program for International Student Assessment (PISA), Trends in International Mathematics and Science Study (TIMSS), and the International Computer Information Literacy Study (ICILS). *Id.* Participation in a specific international assessment is not specified in Florida law. Section 1008.22(2), F.S.

[17] Section 1008.22(2), F.S.

[18] National Center for Education Statistics, *NAEP Overview*, https://nces.ed.gov/nationsreportcard/about/ (last visited March 3, 2017). Additional NAEP subject area assessments include science, the arts, civics, economics, geography, U.S History, and Technology and Engineering Literacy. *Id.*

[19] *Id.*

sample of students in grades 4 and 8 every two years.[20] The NAEP reports assessment results using three achievement levels:[21]

- Basic – A student achieving the Basic level demonstrates a partial mastery of prerequisite knowledge and skills that are fundamental for proficient work at each grade.
- Proficient – A student achieving the Proficient level demonstrates solid academic performance at the grade assessed.[22]
- Advanced – A student achieving the Advanced level demonstrates superior performance.

Participation in the NAEP provides a basis for comparing the knowledge and skills of Florida students with students in other states and with the nation as a whole.[23]

Reading

The following table shows performance trends of students in grade 8 scoring at each achievement level on the NAEP reading assessment compared to select states.[24]

Performance of Students in Grade 8 on NAEP Reading Assessment					
Year	Jurisdiction	Below Basic	At Basic	At Proficient	At Advanced
2015	National Public	25%	42%	29%	3%
	Florida	**25%**	**45%**	**28%**	**2%**
	Connecticut	18%	39%	37%	6%
	Massachusetts	17%	37%	39%	6%
	New Hampshire	15%	40%	40%	5%
	New Jersey	20%	39%	35%	6%
	Vermont	17%	39%	38%	6%
2013	National Public	23%	42%	31%	4%
	Florida	**23%**	**43%**	**30%**	**3%**
	Connecticut	17%	38%	39%	6%
	Massachusetts	16%	36%	40%	8%
	New Hampshire	16%	40%	38%	6%
	New Jersey	15%	39%	40%	7%
	Vermont	16%	39%	39%	6%
2011	National Public	25%	43%	29%	3%
	Florida	**27%**	**43%**	**27%**	**2%**
	Connecticut	17%	39%	38%	6%
	Massachusetts	16%	38%	40%	6%

[20] The Nation's Report Card, *Overview of the Nation's Report Card,* https://www.nationsreportcard.gov/faq.aspx (last visited March 3, 2017).
[21] National Center for Education Statistics, *NAEP Achievement Levels,* https://nces.ed.gov/nationsreportcard/achievement.aspx (last visited March 3, 2017).
[22] National Center for Education Statistics, *NAEP Achievement Levels,* https://nces.ed.gov/nationsreportcard/achievement.aspx (last visited March 3, 2017). Students reaching this level have demonstrated competency over challenging subject matter, including subject-matter knowledge, application of such knowledge to real world situations, and analytical skills appropriate to the subject matter. *Id.*
[23] Florida Department of Education, *National and International Assessments,* http://www.fldoe.org/accountability/assessments/national-international-assessments/ (last visited March 3, 2017).
[24] Email, Florida Department of Education (Feb. 28, 2017).

	New Hampshire	16%	44%	36%	4%
	New Jersey	16%	39%	39%	6%
	Vermont	18%	38%	39%	6%

The following table shows performance trends of students in grade 8 scoring at each achievement level on the NAEP mathematics assessment compared to select states.[25]

Performance of Students in Grade 8 on NAEP Mathematics Assessment					
Year	Jurisdiction	Below Basic	At Basic	At Proficient	At Advanced
2015	National Public	30%	38%	24%	8%
	Florida	**36%**	**38%**	**21%**	**5%**
	Massachusetts	19%	30%	33%	18%
	Minnesota	18%	34%	35%	13%
	New Hampshire	16%	37%	34%	12%
	New Jersey	21%	32%	30%	16%
	Washington	26%	35%	28%	11%
2013	National Public	27%	39%	26%	8%
	Florida	**30%**	**40%**	**24%**	**7%**
	Massachusetts	14%	31%	36%	18%
	Minnesota	17%	35%	33%	14%
	New Hampshire	16%	38%	33%	13%
	New Jersey	18%	34%	33%	16%
	Washington	21%	37%	30%	12%
2011	National Public	28%	39%	26%	8%
	Florida	**32%**	**40%**	**22%**	**4%**
	Massachusetts	14%	34%	36%	15%
	Minnesota	17%	36%	34%	13%
	New Hampshire	18%	38%	33%	11%
	New Jersey	18%	35%	33%	14%
	Washington	23%	36%	29%	11%

III. Effect of Proposed Changes:

The bill requires the Florida Department of Education (DOE) to issue a competitive bid for a private vendor to conduct a comprehensive study of states with high-performing students in grades 6 through 8 in reading and mathematics, based on the states' performance on the National Assessment of Educational Progress (NAEP). Specifically, the study must review, at a minimum:

- Academic expectation and instructional strategies, including:
  - Alignment of elementary and middle grades expectations with high school graduation requirements;
  - Research-based instructional practices in reading and mathematics, including those targeting low-performing and high-performing students;
  - The rigor of the curriculum and courses and the availability of accelerated courses;
  - The availability of student support services; and

[25] Email, Florida Department of Education (Feb. 28, 2017).

  - The sequence of courses and the prerequisites required for advanced courses;
  - The availability of before- and after-school programs, and efforts to address the summer gap between school years, including related funding; and
  - The availability of other academic and noncore classes, and electives.
- Attendance policies and student mobility issues.
- Teacher quality, including:
  - Teacher certification and recertification requirements;
  - Teacher preparedness to teach rigorous courses;
  - Teacher preparation specific to teaching middle school students;
  - Teacher recruitment and vacancy issues;
  - Staff development requirements and the availability of effective training;
  - Teacher collaboration and planning at the school and district levels; and
  - Student performance data collection and dissemination.
- Middle school administrator leadership and performance; and
- Parental and community involvement.

The comprehensive study will involve a review of factors that may contribute to student success. The findings and recommendations may assist the state in considering policy options to improve instruction and student performance in Florida based on a review of best practices of states with high-performing middle grade students in reading and mathematics. The bill indicates:

- Massachusetts, New Hampshire, Vermont, Connecticut, and New Jersey as the top performing states in the percentage of student in grades 4 and 8 who score at or above proficiency on the NAEP reading assessment; and
- Massachusetts, Minnesota, New Hampshire, New Jersey, and Washington as the top performing states in the percentage of student in grades 4 and 8 who score at or above proficiency on the NAEP mathematics assessment.

The bill requires the DOE to submit a report on the findings of the study, as well as recommendations to improve middle school student performance, to the Governor, State Board of Education, President of the Senate, and Speaker of the House of Representatives by December 2017. The bill appropriates $50,000 to the DOE to issue a competitive solicitation for a contract with private vendors to conduct the study and provides for expiration of the provisions related to the comprehensive study of states after the submission of the final report.

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:

This bill appropriates $50,000 to the DOE to issue a competitive solicitation for a contract with private vendors to conduct the required study.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of the Florida law.

IX. Additional Information:

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

CS by Appropriations on April 25, 2017:
The committee substitute:

- Requires the Department of Education (DOE) to issue a competitive solicitation for a contract with private vendors to conduct the required study rather than conduct the study themselves.
- Adds additional components to the study.
- Appropriates $50,000 to the DOE to issue a competitive solicitation for a contract with private vendors to conduct the required study.

B. Amendments:

None.

By Senator Stargel

22-00378A-17 2017360__

A bill to be entitled

An act relating to a middle school study; requiring the Department of Education to conduct a comprehensive study of states with nationally recognized high-performing middle schools in reading and mathematics; requiring a report to the Governor, the State Board of Education, and the Legislature by a specified time; providing for expiration; providing an effective date.

WHEREAS, since 1998, Florida has seen a continuing trend of reading improvement in the elementary school grades, which has led to an increase of 17 percentage points in reading at or above proficiency for 4th grade students on the National Assessment of Educational Progress, while Florida's 8th grade students achieved only an increase of 7 percentage points, and

WHEREAS, since 2003, Florida's 4th grade students have demonstrated an increase of 11 percentage points in mathematics at or above proficiency on the national assessment, while Florida's 8th grade students have shown an increase of only 3 percentage points, and

WHEREAS, since 2013, Florida's middle school students' proficiencies on the national assessment in both reading and mathematics have remained flat or decreased, and

WHEREAS, Massachusetts, New Hampshire, Vermont, Connecticut, and New Jersey are the top performing states in the percentage of 4th and 8th grade students scoring at or above proficiency in reading on the national assessment, and

WHEREAS, Massachusetts, Minnesota, New Hampshire, New Jersey, and Washington are the top performing states in the percentage of 4th and 8th grade students scoring at or above proficiency in mathematics on the national assessment, and

WHEREAS, Florida's academic expectations for students in

22-00378A-17 2017360__

both reading and mathematics were raised in 2010 and 2014, and

WHEREAS, the performance of Florida's middle school students on the state assessments in reading has remained flat since the state's standards were raised, while their performance in mathematics increased slightly between 2015 and 2016, and

WHEREAS, success in the middle school grades is a predictor of academic success in high school and college and career readiness, NOW, THEREFORE,

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

Section 1. Comprehensive study on middle school performance.—

(1) The Department of Education shall conduct a comprehensive study of states with high-performing students in grades 6 through 8 in reading and mathematics, based on the states' performance on the National Assessment of Educational Progress.

(2) The study must include a review, at a minimum, of all of the following:

(a) Academic expectations and instructional strategies, including:

1. Alignment of elementary and middle grades expectations with high school graduation requirements;

2. Research-based instructional practices in reading and mathematics, including those targeting low-performing students;

3. The rigor of the curriculum and courses and the availability of accelerated courses; and

4. The availability of student support services.

(b) Attendance policies and student mobility issues.

(c) Teacher quality, including:

1. Teacher certification and recertification requirements;

2. Teacher preparedness to teach rigorous courses;

3. Teacher recruitment and vacancy issues; and

4. Staff development requirements and the availability of effective training.

(d) Middle school administrator leadership and performance.

(e) Parental and community involvement.

(3) The department shall submit a report on its findings and make recommendations to improve middle school student performance to the Governor, the State Board of Education, the President of the Senate, and the Speaker of the House of Representatives by December 2017.

(4) This section expires upon submission of the final report.

Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR KELLI STARGEL
22nd District

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,

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)

4/25
Meeting Date

~~SB~~ 360
Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly Ct
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 772 204 1792

Email lwvfadvocacy@gmail.com

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.

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)

4-25-17
Meeting Date

360
Bill Number (if applicable)

Topic Middle School Study

Amendment Barcode (if applicable)

Name ~~Floria~~ Cathy Boehme

Job Title Legislative Specialist

Address 213 S. Adams St.
Street

Phone 850-224-7800

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 Education Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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/SB 468 (114168)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Pre- K- 12 Education) and Senator Stargel
SUBJECT:	Voluntary Prekindergarten Education
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Benvenisty	Graf	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 468 revises provisions related to the Voluntary Prekindergarten Education (VPK) program and duties of the Just Read! Florida Office (Just Read! Florida). Specifically, the bill:

- Requires the Just Read, Florida! to train Voluntary Prekindergarten through grade 3 teachers, reading coaches, and school principals on effective research-based instructional strategies.
- Requires the Office of Early Learning (OEL) to determine eligibility for enrollment and reenrollment in the school year VPK program.
- Requires each early learning coalition (ELC) to coordinate with the OEL to assign student identification numbers to each student who enrolls in the program.
- Clarifies that the Department of Education (DOE) must adopt a single statewide kindergarten readiness screening that is a direct assessment of early literacy and numeracy skills.
- Requires private prekindergarten providers and public schools in the VPK program to provide parents with the results of the pre- and post- assessment within 10 days after the administering the assessment.
  - Requires the results of the pre- and post- assessments to be reported at the aggregate level, distributed to the respective ELCs and school districts, and displayed on the OEL's website within 30 days after the administration of the assessment.
- Authorizes a child who is at risk of not attaining the performance standards specified in law to reenroll, at the request of the child's parent, in one of the school-year programs offered by

a provider that has met the adopted minimum readiness rate provided in law for the subsequent year.

The bill allows, beginning in the 2018-2019 school year, a child who is at risk of not attaining the performance standards specified in law to reenroll, at the request of the child's parent, in one of the school-year VPK programs offered by a provider that has met the adopted minimum readiness rate for the subsequent year. The cost of authorizing VPK reenrollment for these children is indeterminate. The Office of Early Learning estimates programming changes necessary to allow a child to reenroll in VPK for an additional year will cost approximately $185,000.

The bill takes effect July 1, 2017.

II. Present Situation:

In 2004, the Legislature established the Voluntary Prekindergarten Education (VPK) Program, a voluntary, free prekindergarten program offered to eligible four-year-old children in the year before admission to kindergarten.[1]

Voluntary Prekindergarten Education Program

Florida's Office of Early Learning (OEL) governs the day-to-day operations of the VPK program.[2] The OEL oversees early learning coalitions (ELCs) regarding child enrollment, attendance reporting, and reimbursement of VPK program providers and monitors VPK program providers for compliance with program requirements.[3] The OEL administers the accountability requirements of the VPK program at the state level.[4] The Florida Department of Education (DOE) is responsible for adopting and requiring each school district to administer a statewide kindergarten readiness screening within the first 30 days of each school year.[5]

Local oversight of the VPK program is provided by the early learning coalitions (ELC) and school districts.[6] Each ELC is the single point of entry for VPK program registration and enrollment in the coalition's county or multi-county service area.[7] Each ELC must coordinate with each school district in the coalition's service area to develop procedures for enrolling children in public school VPK programs.[8] Local oversight of individual VPK programs is split, with the ELCs providing administration over programs delivered by the private prekindergarten providers and school districts administering the public school VPK programs.[9]

[1] Section 1, ch 2004-484, L.O.F.; part V, ch. 1002, F.S.
[2] Sections 1001.213 and 1002.75, F.S.
[3] Section 1002.75, F.S.
[4] *Id.*
[5] Sections 1002.69(1) and 1002.73, F.S.
[6] Section 1002.53(4), F.S.
[7] *Id.* at (4)(a).
[8] *Id.* at (4)(c).
[9] Sections 1002.55(1), 1002.61(1)(a)-(b) and 1002.63(1), F.S.

Child Eligibility and Enrollment

The OEL is responsible for determining eligibility criteria for VPK programs.[10] A child is eligible if he or she is four years of age on or before September 1 of the school year during which he or she is enrolling and until the school year during which the child is eligible for admission or is admitted to kindergarten, whichever occurs first.[11]

A child involved in a VPK program specified in law may withdraw from the VPK program for good cause[12] and reenroll, provided the child has not completed more than 70 percent of the authorized program hours or expended more than 70 percent of the authorized funds.[13] A child that has not substantially completed any VPK Program can withdraw from the program due to an extreme hardship beyond the child's or parent's control, reenroll in one of the summer programs and be reported as a full-time equivalent student in the summer program.[14]

VPK Program Accountability

The OEL is required to develop and adopt performance standards for students enrolled in a VPK program.[15] The performance standards must address the age-appropriate progress of students in the development of:[16]

- The capabilities, capacities, and skills required under Art. IX, s. 1(b), of the Florida Constitution;[17] and
- Emergent literacy skills, including oral communication, knowledge of print and letters, phonemic awareness, and vocabulary and comprehension development.

Florida law requires the DOE to adopt a statewide kindergarten screening (screening) that assesses the readiness of each student for kindergarten based upon the performance standards[18] adopted for the VPK program.[19] The screening must be administered to each kindergarten student in a school district within the first 30 school days of each school year.[20] Data from the screening is used to calculate the VPK provider kindergarten readiness rate.[21]

The OEL annually calculates each public school's or private provider's kindergarten readiness rate based on the percentage of students who have met all state readiness measures and student learning gains, as determined by the results of the pre- and post-assessments during at least two years.[22] Currently, the instrument is a developmental screening tool based on the Work Sampling

[10] Section 1002.75(2)(a).
[11] Section 1002.53(2), F.S.
[12] Section 1002.71(4)(b), F.S.
[13] *Id.* at (4)(a).
[14] Section 1002.71(4)(b), F.S.
[15] Section 1002.67(1)(a), F.S.
[16] *Id.*
[17] An early childhood development and education program means an organized program designed to address and enhance each child's ability to make age appropriate progress in an appropriate range of settings in the development of language and cognitive capabilities and emotional, social, regulatory and moral capacities through education in basic skills and such other skills as the Legislature may determine to be appropriate.. Art. IX, s. X, Fla. Const.
[18] Section 1002.67(1), F.S.
[19] Section 1002.69(1), F.S.
[20] *Id.*
[21] *Id.* at (5).
[22] *Id.* at (4) – (5).

System (WSS).[23] A subset of WSS performance indicators is provided in five domains: Personal and Social Development; Language and Literacy; Mathematical Thinking; Scientific Thinking; and Physical Development, Health, and Safety.[24]
Additionally, each VPK program private prekindergarten provider and public school must administer an evidence-based pre- and post-assessment approved by the State Board of Education, which must be valid, reliable, developmentally appropriate, and designed to measure student progress on a variety of domains, including, but not limited to, early literacy and language.[25]

Just Read, Florida! Office

In 2006, the Legislature created the Just Read, Florida! Office (Office) within the DOE to oversee implementation of the statewide public school reading requirements.[26] The Office is required to, among other things:[27]

- Provide technical assistance to school districts in the development and implementation of district plans for use of the research-based reading allocation.[28]
- Review, evaluate, and provide technical assistance to school districts' implementation of the K-12 comprehensive reading plan.
- Work with the Florida Center for Reading Research[29] to provide information on research-based reading programs and effective reading in the content area strategies.
- Train kindergarten through grade 12 teachers and school principals on effective content-area-specific reading strategies.

Florida law requires DOE to monitor and track the implementation of each district's K-12 comprehensive reading plan and report its findings annually to the Legislature by February 1.[30]

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[23] Email, Florida Department of Education (March 30, 2017).
[24] Florida's Office of Early Learning, *VPK Prekindergarten Readiness Rate Resources for Parents*, https://vpk.fldoe.org/InfoPages/ParentInfo.aspx (last visited March 31, 2017); Florida's Office of Early Learning, *Florida Kindergarten Readiness Screener (FLKRS)*, http://www.floridaearlylearning.com/providers/provider_resources/florida_kindergarten_readiness_screener.aspx (last visited March 31, 2017).
[25] Section 1002.67(1)(a), F.S. The OEL must periodically review and revise the performance standards for the statewide kindergarten screening and align the standards to those established by the State Board of Education for student performance on statewide, standardized assessments. *Id.* at (1)(b).
[26] Section 8, ch. 2006-74, L.O.F., *codified as* s. 1001.215, F.S.
[27] Section 1001.215, F.S.
[28] Each school district is required to annually submit a K-12 comprehensive reading plan for the specific use of the research-based reading instruction allocation. The reading plans are submitted to and approved by the Just Read, Florida! Office. Section 1011.62(9)(d), F.S. The requirements for the reading plans are set forth in rule by the State Board of Education. Rule 6A-6.053, F.A.C.
[29] The Florida Center for Reading Research (FCRR) was created at the Florida State University and includes two outreach centers, one at a Florida College System institution in central Florida and one at a south Florida state university. Section 1004.645, F.S. The FCRR conducts basic research on reading, reading growth, reading assessment, and reading instruction; disseminates information about research-based practices related to literacy instruction and assessment; conducts applied research; and provides technical assistance to Florida's schools and the Just Read, Florida! Office. *See* Florida State University, Florida Center for Reading Instruction, *The Center's Four Part Mission*, http://www.fcrr.org/ (last visited March 31, 2017).
[30] Section 1011.62(9)(d), F.S.

Florida Center for Reading Research

In 2006, the Legislature created The Florida Center for Reading Research at Florida State University[31] to:

- Provide technical assistance and support to all school districts and schools in this state in the implementation of evidence-based literacy instruction, assessments, programs, and professional development
- Conduct applied research that will have an immediate impact on policy and practices related to literacy instruction and assessment in this state with an emphasis on struggling readers and reading in the content area strategies and methods for secondary teachers.
- Conduct basic research on reading, reading growth, reading assessment, and reading instruction, which will contribute to scientific knowledge about reading.
- Collaborate with the Just Read! Florida Office and school districts in the development of frameworks for comprehensive reading intervention courses for possible use in middle schools and secondary schools.
- Collaborate with the Just Read! Florida Office and school districts in the development of frameworks for professional development activities, using multiple delivery methods for teaching reading in the content area.
- Disseminate information about research-based practices related to literacy instruction, assessment, and programs for students in preschool through grade 12.
- Collect, manage, and report on assessment information from screening, progress monitoring, and outcome assessments through the Florida Progress Monitoring and Reporting Network. The network is a statewide resource that is operated to provide valid and timely reading assessment data for parents, teachers, principals, and district-level and state-level staff in the management of instruction at the individual, classroom, and school levels.[32]

III. Effect of Proposed Changes:

The bill revises provisions related to the Voluntary Prekindergarten Education (VPK) program and duties of the Just Read! Florida Office (Just Read! Florida). Specifically, the bill:

- Requires the Just Read, Florida! to train Voluntary Prekindergarten through grade 3 teachers, reading coaches, and school principals on effective research-based instructional strategies.
- Requires the Office of Early Learning (OEL) to determine eligibility for enrollment and reenrollment in the school year VPK program.
- Requires each early learning coalition (ELC) to coordinate with the OEL to assign student identification numbers to each student who enrolls in the program.
- Clarifies that the Department of Education must adopt a single statewide kindergarten readiness screening that is a direct assessment of early literacy and numeracy skills.
- Requires private prekindergarten providers and public schools in the VPK program to provide parents with the results of the pre- and post- assessment within 10 days after the administering the assessment.
    - Requires the results of the pre- and post- assessments to be reported at the aggregate level, distributed to the respective ELCs and school districts, and displayed on the OEL's website within 30 days after the administration of the assessment.

[31] Section 34, chapter 2006-74, L.O.F.
[32] Section 1004.645, F.S.

- Authorizes a child who is at risk of not attaining the performance standards specified in law to reenroll, at the request of the child's parent, in one of the school-year programs offered by a provider that has met the adopted minimum readiness rate provided in law for the subsequent year.

Voluntary Prekindergarten Education Program (Sections 2 through 6)

Section 2 amends s. 1002.51, F.S., to define a "public school prekindergarten provider" to include a charter school authorized to provide a prekindergarten program in its charter that is eligible to deliver a prekindergarten program as specified in law.

Sections 4 and 5 amends ss. 1002.67 and 1002.69, F.S., respectively, to make several changes regarding VPK assessments. Section 3 requires that each public and private school in the VPK Education Program provide parents the results of the pre- and post-assessments, including any resources that might be helpful to their students, within 10 days after administration of the assessment. This section also requires the results be reported at the aggregate level, distributed to the respective ELC and districts and be available on the office's website 30 days after administering the assessment. These provisions may help parents provide instructional support at home to improve student performance outcomes and may result in greater transparency in identifying successful VPK programs.

Section 5 requires the statewide kindergarten screening to be a single instrument that emphasizes and directly assesses early literacy and numeracy skills. A single screening instrument may provide greater consistency across the state in assessing the kindergarten readiness rate and greater accountability for VPK programs.

Section 6 amends s. 1002.71, F.S., to authorize, beginning in the 2018-2019 school year, a child who is at risk of not attaining the performance standards specified in law to reenroll, at the request of the child's parent, in one of the school-year programs offered by a provider that has met the adopted minimum readiness rate provided in law for the subsequent year. Section 3 authorizes the OEL to determine the eligibility criteria for reenrollment in the school year VPK Education Program.

Additionally, section 3 amends s. 100253, F.S., to require each ELC to coordinate with the OEL to assign student identification numbers to each VPK student.

Just Read, Florida! Office (Sections 1 and 7)

Section 1 amends s. 1001.215, F.S., to require Just Read! Florida to train VPK through grade 3 teachers and reading coaches on effective research-based reading instructional strategies and interventions. This section also removes the requirement for Just Read! Florida to train grade K-3 teachers and school principals on effective content-area-specific reading strategies, and limits that requirement to grade 4-12 teachers and principals.

Section 1 requires Just Read! Florida to collaborate with the Office of Early Learning to develop the training. Contingent upon legislative appropriation, this training must be designed to be consistently delivered statewide in an appropriate format. This section also requires Just Read!

Florida to collaborate with the Florida Center for Reading Research to develop and provide access to sequenced curriculum programming, instructional practices and resources that help elementary schools use state-adopted instructional materials and content-rich to increase students' knowledge and reading skills.

Accordingly, the bill appears to be placing a greater emphasis on early reading instruction and intervention.

Section 7 amends s. 1011.62, F.S., to change the date the DOE must report its findings annually to the Legislature from February 1 to December 1, and clarifies that the report must include findings from the previous school year.

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:

According to the Florida Department of Education, early learning coalitions and private VPK program providers may incur additional costs associated with training program delivery, distribution of pre- and post- assessment reports to parents, and issuing or tracking unique student identifiers.[33] Associated costs are indeterminable at this time.[34]

C. Government Sector Impact:

The bill allows a child who is at risk of not attaining the performance standards specified in law to reenroll, at the request of the child's parent, in one of the school-year VPK programs offered by a provider that has met the adopted minimum readiness rate

[33] Florida Department of Education, *2017 Agency Legislative Bill Analysis for SB 468* (March 17, 2017), at 7.
[34] *Id.*

provided in law for the subsequent year. The cost of authorizing VPK reenrollment for these children is indeterminate.

According to the Department of Education, approximately 20 percent of all VPK children are not ready for kindergarten; therefore, approximately 20 percent of the 157,000 VPK students, or 31,000 children, could potentially opt to retake the school-year program at a projected cost of $75.5 million (31,000 x $2,437). However, the actual number of parents who would choose this option is unknown, as it is unlikely that most parents would choose to reenroll their child in VPK rather than attending kindergarten. Current law allows a parent to postpone enrollment in a VPK program for one year if the parents feels the children is not ready. Only 374 children statewide utilized this option in the 2016-2017 fiscal year.[35]

According to the Office of Early Learning (OEL), the Family Portal, Provider Portal and the Coalitions Service Portal will need programming changes to allow a child to reenroll in VPK for an additional year. OEL estimates that it will take 9 information technology contractors to incorporate this change. This includes 3 developers, 2 database analyst/administrators, 2 business analyst and 2 quality assurance (testers). The total team effort will be 2,800 hours over a 2-month period at an estimated cost of $185,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.215, 1002.51, 1002.53, 1002.67, 1002.69, 1002.71, and 1011.62.

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 by Appropriations Subcommittee on Pre-K-12 Education on April 18, 2017:
The committee substitute:

- Defines a "public school prekindergarten provider" as including a charter school authorized to provide a prekindergarten program in its charter that is eligible to deliver a prekindergarten program as specified in law.

[35] Email, Florida Department of Education, Office of Early Learning (April 13, 2017).

- Requires Just Read! Florida to collaborate with the Florida Center for Reading Research to develop and provide access to sequenced curriculum programming, instructional practices and resources that help elementary schools use state-adopted instructional materials and content-rich to increase students' knowledge and reading skills.
- Removes the $10 million appropriation to the Department of Education for the training of VPK through grade 3 teachers, reading coaches, and school principals on research-based reading instructional strategies and interventions.

B. Amendments:

None.

421754

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 41 - 96
and insert:
(3) Train prekindergarten through grade 5 ~~K-12~~ teachers and reading coaches ~~school principals~~ on effective research-based ~~content-area-specific~~ reading strategies and intervention strategies for all students, the integration of content-rich texts from other core subject areas into reading instruction, evidence-based reading strategies identified in subsection (7),

421754

and technology tools to improve student reading performance. Contingent upon legislative appropriation, this training must be designed to be consistently delivered statewide in an appropriate format. The office shall collaborate with the Office of Early Learning and the Florida Center for Reading Research to develop the training. For secondary teachers, emphasis shall be on technical text. These strategies must be developed for all content areas in the grade 4-12 ~~K-12~~ curriculum.

(7) Work with the Florida Center for Reading Research to identify evidence-based reading instructional and intervention programs that incorporate explicit, systematic, and sequential approaches to teaching phonemic awareness, phonics, vocabulary, fluency, and text comprehension and incorporate decodable or phonetic text instructional ~~to provide information on research-based reading programs and effective reading in the content area~~ strategies.

(8) Work with the Florida Center for Reading Research to develop and provide access to sequenced curriculum programming, instructional practices, and resources that help elementary schools use state-adopted instructional materials and content-rich texts to increase students' background knowledge and literacy skills consistent with the state academic standards.

(9)~~(8)~~ Periodically review the Next Generation Sunshine State Standards for reading at all grade levels.

(10)~~(9)~~ Periodically review teacher certification examinations, including alternative certification exams, to ascertain whether the examinations measure the skills needed for research-based reading instruction ~~and instructional strategies for teaching reading in the content areas~~.

421754

Section 2. Subsection (8) is added to section 1002.51, Florida Statutes, to read:

1002.51 Definitions.—As used in this part, the term:

(8) "Public school prekindergarten provider" includes a charter school that is

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

And the directory clause is amended as follows:

Delete lines 35 - 36

and insert:

Section 1. Present subsections (8) through (11) of section 1001.215, Florida Statutes, are redesignated as subsections (9) through (12), respectively, subsections (3) and (7) and present subsections (8) and (9) of that section are amended, and a new subsection (8) is added to that section, to read:

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

And the title is amended as follows:

Delete line 6

and insert:

through grade 5 with specified training; requiring the

114168

576-04047-17

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Pre-K - 12 Education)

A bill to be entitled

An act relating to voluntary prekindergarten education; amending s. 1001.215, F.S.; requiring the Just Read, Florida! Office to provide teachers, reading coaches, and principals in prekindergarten through grade 3 with specified training; requiring the office to work with the Florida Center for Reading Research to develop and provide access to certain programming, practices, and resources; amending s. 1002.51, F.S.; defining the term "public school prekindergarten provider"; amending s. 1002.53, F.S.; requiring each early learning coalition to coordinate with the Office of Early Learning to assign student identification numbers for the Voluntary Prekindergarten Education Program; amending s. 1002.67, F.S.; requiring voluntary prekindergarten providers to provide parents with pre- and post-assessment results within a specified timeframe; providing for the reporting and distribution of the results; requiring the office to determine eligibility criteria for reenrollment; amending s. 1002.69, F.S.; revising requirements for the adoption and use of the statewide kindergarten screening; conforming cross-references; amending s. 1002.71, F.S.; authorizing a child to reenroll in certain school-year programs under certain circumstances; amending s. 1011.62, F.S.; revising the date by which the Department of

114168

576-04047-17

Education must submit specified information regarding the implementation of school district K-12 comprehensive reading plans to the Legislature; providing an effective date.

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

Section 1. Section 1001.215, Florida Statutes, is amended to read:

1001.215 Just Read, Florida! Office.—There is created in the Department of Education the Just Read, Florida! Office. The office shall be fully accountable to the Commissioner of Education and shall:

(1) Train highly effective reading coaches.

(2) Create multiple designations of effective reading instruction, with accompanying credentials, which encourage all teachers to integrate reading instruction into their content areas.

(3) Train Voluntary Prekindergarten through grade 3 teachers, reading coaches, and school principals on effective research-based reading instructional strategies and interventions for all students. Contingent upon legislative appropriation, this training must be designed to be consistently delivered statewide in an appropriate format. The office shall collaborate with the Office of Early Learning to develop the training.

(4) ~~(3)~~ Train grade 4-12 ~~K-12~~ teachers and school principals on effective content-area-specific reading strategies. For secondary teachers, emphasis shall be on technical text. These

strategies must be developed for all content areas in the grade 4-12 ~~K-12~~ curriculum.

(5)~~(4)~~ Provide parents with information and strategies for assisting their children in reading in the content area.

(6)~~(5)~~ Provide technical assistance to school districts in the development and implementation of district plans for use of the research-based reading instruction allocation provided in s. 1011.62(9) and annually review and approve such plans.

(7)~~(6)~~ Review, evaluate, and provide technical assistance to school districts' implementation of the K-12 comprehensive reading plan required in s. 1011.62(9).

(8)~~(7)~~ Work with the Florida Center for Reading Research to provide information on research-based reading programs and effective reading in the content area strategies.

(9) Work with the Florida Center for Reading Research to develop and provide access to sequenced curriculum programming, instructional practices, and resources that help elementary schools use state-adopted instructional materials and content-rich texts to increase students' background knowledge and literacy skills consistent with the state academic standards.

(10)~~(8)~~ Periodically review the Next Generation Sunshine State Standards for reading at all grade levels.

(11)~~(9)~~ Periodically review teacher certification examinations, including alternative certification exams, to ascertain whether the examinations measure the skills needed for research-based reading instruction ~~and instructional strategies for teaching reading in the content areas~~.

(12)~~(10)~~ Work with teacher preparation programs approved pursuant to s. 1004.04 to integrate research-based reading

instructional strategies and reading in the content area instructional strategies into teacher preparation programs.

(13)~~(11)~~ Administer grants and perform other functions as necessary to meet the goal that all students read at grade level.

Section 2. Subsection (8) is added to section 1002.51, Florida Statutes, to read:

1002.51 Definitions.—As used in this part, the term:

(8) "Public school prekindergarten provider" includes a charter school that is authorized to provide a prekindergarten program in its charter consistent with s. 1002.33 and that is eligible to deliver the school-year prekindergarten program under s. 1002.63 or the summer prekindergarten program under s. 1002.61.

Section 3. Paragraph (d) is added to subsection (4) of section 1002.53, Florida Statutes, to read:

1002.53 Voluntary Prekindergarten Education Program; eligibility and enrollment.—

(4)

(d) Each early learning coalition shall coordinate with the Office of Early Learning to assign student identification numbers to each student who enrolls in the Voluntary Prekindergarten Education Program.

Section 4. Paragraphs (a) and (c) of subsection (2) of section 1002.67, Florida Statutes, are amended, paragraphs (d) and (e) are added to subsection (3) of that section, present subsection (4) of that section is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

1002.67 Performance standards; curricula and

accountability.—

(2)(a) Each private prekindergarten provider and public school may select or design the curriculum that the provider or school uses to implement the Voluntary Prekindergarten Education Program, except as otherwise required for a provider or school that is placed on probation under paragraph (5)(c) ~~(4)(c)~~.

(c) The office shall review and approve curricula for use by private prekindergarten providers and public schools that are placed on probation under paragraph (5)(c) ~~(4)(c)~~. The office shall maintain a list of the curricula approved under this paragraph. Each approved curriculum must meet the requirements of paragraph (b).

(3)

(d) Each private prekindergarten provider and public school in the Voluntary Prekindergarten Education Program shall provide parents with the results of the pre- and post-assessments, including any resources that might be helpful for their students, within 10 days after administration of the assessment.

(e) The results of the pre- and post-assessments must be reported at the aggregate level, distributed to the respective early learning coalitions and school districts, and displayed on the office's website within 30 days after administration of the assessment.

(4) The office shall determine the eligibility criteria for enrollment, as authorized by s. 1002.71(4)(c), and for reenrollment in the school year Voluntary Prekindergarten Education Program.

Section 5. Subsections (1) and (2) and paragraphs (a), (e), and (f) of subsection (7) of section 1002.69, Florida Statutes,

are amended to read:

1002.69 Statewide kindergarten screening; kindergarten readiness rates; state-approved prekindergarten enrollment screening; good cause exemption.—

(1) The department shall adopt a single statewide kindergarten screening that assesses the readiness of each student for kindergarten based upon the performance standards adopted by the department under s. 1002.67(1) for the Voluntary Prekindergarten Education Program. The department shall require that each school district administer the statewide kindergarten screening to each kindergarten student in the school district within the first 30 school days of each school year. Nonpublic schools may administer the statewide kindergarten screening to each kindergarten student in a nonpublic school who was enrolled in the Voluntary Prekindergarten Education Program.

(2) The statewide kindergarten screening must ~~shall~~ provide objective data concerning each student's readiness for kindergarten and progress in attaining the performance standards adopted by the office under s. 1002.67(1), with an emphasis on early literacy and numeracy skills. The screening must be a direct assessment of these skills.

(7)(a) Notwithstanding s. 1002.67(5)(c)3. ~~s. 1002.67(4)(c)3.~~, the office, upon the request of a private prekindergarten provider or public school that remains on probation for 2 consecutive years or more and subsequently fails to meet the minimum rate adopted under subsection (6) and for good cause shown, may grant to the provider or school an exemption from being determined ineligible to deliver the Voluntary Prekindergarten Education Program and receive state

funds for the program. Such exemption is valid for 1 year and, upon the request of the private prekindergarten provider or public school and for good cause shown, may be renewed.

(e) A private prekindergarten provider or public school granted a good cause exemption shall continue to implement its improvement plan and continue the corrective actions required under s. 1002.67(5)(c)1. ~~s. 1002.67(4)(c)1.~~, including the use of a curriculum approved by the office, until the provider or school meets the minimum rate adopted under subsection (6).

(f) If a good cause exemption is granted to a private prekindergarten provider who remains on probation for 2 consecutive years, the office shall notify the early learning coalition of the good cause exemption and direct that the coalition, notwithstanding s. 1002.67(5)(c)3. ~~s. 1002.67(4)(c)3.~~, not remove the provider from eligibility to deliver the Voluntary Prekindergarten Education Program or to receive state funds for the program, if the provider meets all other applicable requirements of this part.

Section 6. Paragraph (c) is added to subsection (4) of section 1002.71, Florida Statutes, to read:

1002.71 Funding; financial and attendance reporting.—

(4) Notwithstanding s. 1002.53(3) and subsection (2):

(c) Beginning in the 2018-2019 school year, a child who has completed a school-year Voluntary Prekindergarten Education Program but is determined to be at risk of not attaining the performance standards specified by s. 1002.67(1) may reenroll in one of the school-year programs, which is offered by a provider that has met the adopted minimum readiness rate provided under s. 1002.69(6), for the subsequent year at the request of the

child's parent. The prekindergarten program may report the child for funding purposes as a full-time equivalent student in the school-year program for which he or she is enrolled.

A child may reenroll only once in a prekindergarten program under this section. A child who reenrolls in a prekindergarten program under this subsection may not subsequently withdraw from the program and reenroll, unless the child is granted a good cause exemption under this subsection. The Office of Early Learning shall establish criteria specifying whether a good cause exists for a child to withdraw from a program under paragraph (a), whether a child has substantially completed a program under paragraph (b), and whether an extreme hardship exists which is beyond the child's or parent's control under paragraph (b).

Section 7. Paragraph (d) of subsection (9) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(9) RESEARCH-BASED READING INSTRUCTION ALLOCATION.—

(d) Annually, by a date determined by the Department of Education but before May 1, school districts shall submit a K-12 comprehensive reading plan for the specific use of the research-based reading instruction allocation in the format prescribed by the department for review and approval by the Just Read,

Florida! Office created pursuant to s. 1001.215. The plan annually submitted by school districts shall be deemed approved unless the department rejects the plan on or before June 1. If a school district and the Just Read, Florida! Office cannot reach agreement on the contents of the plan, the school district may appeal to the State Board of Education for resolution. School districts shall be allowed reasonable flexibility in designing their plans and shall be encouraged to offer reading intervention through innovative methods, including career academies. The plan format shall be developed with input from school district personnel, including teachers and principals, and shall allow courses in core, career, and alternative programs that deliver intensive reading remediation through integrated curricula, provided that the teacher is deemed highly qualified to teach reading or is working toward that status. No later than July 1 annually, the department shall release the school district's allocation of appropriated funds to those districts having approved plans. A school district that spends 100 percent of this allocation on its approved plan shall be deemed to have been in compliance with the plan. The department may withhold funds upon a determination that reading instruction allocation funds are not being used to implement the approved plan. The department shall monitor and track the implementation of each district plan, including conducting site visits and collecting specific data on expenditures and reading improvement results. By December ~~February~~ 1 of each year, the department shall report its findings from the previous school year to the Legislature.

Section 8. 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:	SB 468
INTRODUCER:	Senator Stargel
SUBJECT:	Voluntary Prekindergarten Education
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Benvenisty	Graf	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**
4.			RC	

I. Summary:

SB 468 revises provisions related to the Voluntary Prekindergarten Education (VPK) program and duties of the Just Read! Florida Office (Just Read! Florida). Specifically, the bill:

- Requires the Just Read, Florida! to train Voluntary Prekindergarten through grade 3 teachers, reading coaches, and school principals on effective research-based instructional strategies.
- Requires the Office of Early Learning (OEL) to determine eligibility for enrollment and reenrollment in the school year VPK program.
- Requires each early learning coalition (ELC) to coordinate with the OEL to assign student identification numbers to each student who enrolls in the program.
- Clarifies that the Department of Education (DOE) must adopt a single statewide kindergarten readiness screening that is a direct assessment of early literacy and numeracy skills.
- Requires private prekindergarten providers and public schools in the VPK program to provide parents with the results of the pre- and post- assessment within 10 days after the administering the assessment.
    - Requires the results of the pre- and post- assessments to be reported at the aggregate level, distributed to the respective ELCs and school districts, and displayed on the OEL's website within 30 days after the administration of the assessment.
- Authorizes a child who is at risk of not attaining the performance standards specified in law to reenroll, at the request of the child's parent, in one of the school-year programs offered by a provider that has met the adopted minimum readiness rate provided in law for the subsequent year.
- Provides for an appropriation of $10 million dollars from the General Revenue Fund to the DOE for developing training for VPK through grade 3 teachers, reading coaches, and school principals.

The bill appropriates $10 million for the 2017-2018 Fiscal Year from the General Revenue Fund to the DOE for the development and training of VPK through grade 3 teachers, reading coaches and school principals on research-based reading instructional strategies and interventions.

The bill takes effect July 1, 2017.

II. Present Situation:

In 2004, the Legislature established the Voluntary Prekindergarten Education (VPK) Program, a voluntary, free prekindergarten program offered to eligible four-year-old children in the year before admission to kindergarten.[1]

Voluntary Prekindergarten Education Program

Florida's Office of Early Learning (OEL) governs the day-to-day operations of the VPK program.[2] The OEL oversees early learning coalitions (ELCs) regarding child enrollment, attendance reporting, and reimbursement of VPK program providers and monitors VPK program providers for compliance with program requirements.[3] The OEL administers the accountability requirements of the VPK program at the state level.[4] The Florida Department of Education (DOE) is responsible for adopting and requiring each school district to administer a statewide kindergarten readiness screening within the first 30 days of each school year.[5]

Local oversight of the VPK program is provided by the early learning coalitions (ELC) and school districts.[6] Each ELC is the single point of entry for VPK program registration and enrollment in the coalition's county or multi-county service area.[7] Each ELC must coordinate with each school district in the coalition's service area to develop procedures for enrolling children in public school VPK programs.[8] Local oversight of individual VPK programs is split, with the ELCs providing administration over programs delivered by the private prekindergarten providers and school districts administering the public school VPK programs.[9]

Child Eligibility and Enrollment

The OEL is responsible for determining eligibility criteria for VPK programs.[10] A child is eligible if he or she is four years of age on or before September 1 of the school year during which he or she is enrolling and until the school year during which the child is eligible for admission or is admitted to kindergarten, whichever occurs first.[11]

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[1] Section 1, ch 2004-484, L.O.F.; part V, ch. 1002, F.S.
[2] Sections 1001.213 and 1002.75, F.S.
[3] Section 1002.75, F.S.
[4] *Id.*
[5] Sections 1002.69(1) and 1002.73, F.S.
[6] Section 1002.53(4), F.S.
[7] *Id.* at (4)(a).
[8] *Id.* at (4)(c).
[9] Sections 1002.55(1), 1002.61(1)(a)-(b) and 1002.63(1), F.S.
[10] Section 1002.75(2)(a).
[11] Section 1002.53(2), F.S.

A child involved in a VPK program specified in law may withdraw from the VPK program for good cause[12] and reenroll, provided the child has not completed more than 70 percent of the authorized program hours or expended more than 70 percent of the authorized funds.[13] A child that has not substantially completed any VPK Program can withdraw from the program due to an extreme hardship beyond the child's or parent's control, reenroll in one of the summer programs and be reported as a full-time equivalent student in the summer program.[14]

VPK Program Accountability

The OEL is required to develop and adopt performance standards for students enrolled in a VPK program.[15] The performance standards must address the age-appropriate progress of students in the development of:[16]

- The capabilities, capacities, and skills required under Art. IX, s. 1(b), of the Florida Constitution;[17] and
- Emergent literacy skills, including oral communication, knowledge of print and letters, phonemic awareness, and vocabulary and comprehension development.

Florida law requires the DOE to adopt a statewide kindergarten screening (screening) that assesses the readiness of each student for kindergarten based upon the performance standards[18] adopted for the VPK program.[19] The screening must be administered to each kindergarten student in a school district within the first 30 school days of each school year.[20] Data from the screening is used to calculate the VPK provider kindergarten readiness rate.[21]

The OEL annually calculates each public school's or private provider's kindergarten readiness rate based on the percentage of students who have met all state readiness measures and student learning gains, as determined by the results of the pre- and post-assessments during at least two years.[22] Currently, the instrument is a developmental screening tool based on the Work Sampling System (WSS).[23] A subset of WSS performance indicators is provided in five domains: Personal and Social Development; Language and Literacy; Mathematical Thinking; Scientific Thinking; and Physical Development, Health, and Safety.[24]

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[12] Section 1002.71(4)(b), F.S.
[13] *Id.* at (4)(a).
[14] Section 1002.71(4)(b), F.S.
[15] Section 1002.67(1)(a), F.S.
[16] *Id.*
[17] An early childhood development and education program means an organized program designed to address and enhance each child's ability to make age appropriate progress in an appropriate range of settings in the development of language and cognitive capabilities and emotional, social, regulatory and moral capacities through education in basic skills and such other skills as the Legislature may determine to be appropriate.. Art. IX, s. X, Fla. Const.
[18] Section 1002.67(1), F.S.
[19] Section 1002.69(1), F.S.
[20] *Id.*
[21] *Id.* at (5).
[22] *Id.* at (4) – (5).
[23] Email, Florida Department of Education (March 30, 2017).
[24] Florida's Office of Early Learning, *VPK Prekindergarten Readiness Rate Resources for Parents*, https://vpk.fldoe.org/InfoPages/ParentInfo.aspx (last visited March 31, 2017); Florida's Office of Early Learning, *Florida Kindergarten Readiness Screener (FLKRS)*, http://www.floridaearlylearning.com/providers/provider_resources/florida_kindergarten_readiness_screener.aspx (last visited March 31, 2017).

Additionally, each VPK program private prekindergarten provider and public school must administer an evidence-based pre- and post-assessment approved by the State Board of Education, which must be valid, reliable, developmentally appropriate, and designed to measure student progress on a variety of domains, including, but not limited to, early literacy and language.[25]

Just Read, Florida! Office

In 2006, the Legislature created the Just Read, Florida! Office (Office) within the DOE to oversee implementation of the statewide public school reading requirements.[26] The Office is required to, among other things:[27]

- Provide technical assistance to school districts in the development and implementation of district plans for use of the research-based reading allocation.[28]
- Review, evaluate, and provide technical assistance to school districts' implementation of the K-12 comprehensive reading plan.
- Work with the Florida Center for Reading Research[29] to provide information on research-based reading programs and effective reading in the content area strategies.
- Train kindergarten through grade 12 teachers and school principals on effective content-area-specific reading strategies.

Florida law requires DOE to monitor and track the implementation of each district's K-12 comprehensive reading plan and report its findings annually to the Legislature by February 1.[30]

III. Effect of Proposed Changes:

The bill revises provisions related to the Voluntary Prekindergarten Education (VPK) program and duties of the Just Read! Florida Office (Just Read! Florida). Specifically, the bill:

- Requires the Just Read, Florida! to train Voluntary Prekindergarten through grade 3 teachers, reading coaches, and school principals on effective research-based instructional strategies.
- Requires the Office of Early Learning (OEL) to determine eligibility for enrollment and reenrollment in the school year VPK program.

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[25] Section 1002.67(1)(a), F.S. The OEL must periodically review and revise the performance standards for the statewide kindergarten screening and align the standards to those established by the State Board of Education for student performance on statewide, standardized assessments. *Id.* at (1)(b).
[26] Section 8, ch. 2006-74, L.O.F., *codified as* s. 1001.215, F.S.
[27] Section 1001.215, F.S.
[28] Each school district is required to annually submit a K-12 comprehensive reading plan for the specific use of the research-based reading instruction allocation. The reading plans are submitted to and approved by the Just Read, Florida! Office. Section 1011.62(9)(d), F.S. The requirements for the reading plans are set forth in rule by the State Board of Education. Rule 6A-6.053, F.A.C.
[29] The Florida Center for Reading Research (FCRR) was created at the Florida State University and includes two outreach centers, one at a Florida College System institution in central Florida and one at a south Florida state university. Section 1004.645, F.S. The FCRR conducts basic research on reading, reading growth, reading assessment, and reading instruction; disseminates information about research-based practices related to literacy instruction and assessment; conducts applied research; and provides technical assistance to Florida's schools and the Just Read, Florida! Office. *See* Florida State University, Florida Center for Reading Instruction, *The Center's Four Part Mission*, http://www.fcrr.org/ (last visited March 31, 2017).
[30] Section 1011.62(9)(d), F.S.

- Requires each early learning coalition (ELC) to coordinate with the OEL to assign student identification numbers to each student who enrolls in the program.
- Clarifies that the Department of Education must adopt a single statewide kindergarten readiness screening that is a direct assessment of early literacy and numeracy skills.
- Requires private prekindergarten providers and public schools in the VPK program to provide parents with the results of the pre- and post- assessment within 10 days after the administering the assessment.
    - Requires the results of the pre- and post- assessments to be reported at the aggregate level, distributed to the respective ELCs and school districts, and displayed on the OEL's website within 30 days after the administration of the assessment.
- Authorizes a child who is at risk of not attaining the performance standards specified in law to reenroll, at the request of the child's parent, in one of the school-year programs offered by a provider that has met the adopted minimum readiness rate provided in law for the subsequent year.
- Provides for an appropriation of $10 million dollars from the General Revenue Fund to the DOE for developing training for VPK through grade 3 teachers, reading coaches, and school principals.

Voluntary Prekindergarten Education Program (Sections 2 through 5)

Sections 3 and 4 amends ss. 1002.67 and 1002.69, F.S., respectively, to make several changes regarding VPK assessments. Section 3 requires that each public and private school in the VPK Education Program provide parents the results of the pre- and post-assessments, including any resources that might be helpful to their students, within 10 days after administration of the assessment. This section also requires the results be reported at the aggregate level, distributed to the respective ELC and districts and be available on the office's website 30 days after administering the assessment. These provisions may help parents provide instructional support at home to improve student performance outcomes and may result in greater transparency in identifying successful VPK programs.

Section 4 requires the statewide kindergarten screening to be a single instrument that emphasizes and directly assesses early literacy and numeracy skills. A single screening instrument may provide greater consistency across the state in assessing the kindergarten readiness rate and greater accountability for VPK programs.

Section 5 amends s. 1002.71, F.S., to authorize a child who is at risk of not attaining the performance standards specified in law to reenroll, at the request of the child's parent, in one of the school-year programs offered by a provider that has met the adopted minimum readiness rate provided in law for the subsequent year. Section 3 authorizes the OEL to determine the eligibility criteria for reenrollment in the school year VPK Education Program.

Additionally, section 2 amends s. 100253, F.S., to require each ELC to coordinate with the OEL to assign student identification numbers to each VPK student.

Just Read, Florida! Office (Sections 1, 6, and 7)

Section 1 amends s. 1001.215, F.S., to require Just Read! Florida to train VPK through grade 3 teachers and reading coaches on effective research-based reading instructional strategies and interventions. This section also removes the requirement for Just Read! Florida to train grade K-3 teachers and school principals on effective content-area-specific reading strategies, and limits that requirement to grade 4-12 teachers and principals.

Additionally, this section requires Just Read! Florida to collaborate with the Office of Early Learning to develop the training. Contingent upon legislative appropriation, this training must be designed to be consistently delivered statewide in an appropriate format.

Accordingly, the bill appears to be placing a greater emphasis on early reading instruction and intervention.

Section 6 amends s. 1011.62, F.S., to change the date the DOE must report its findings annually to the Legislature from February 1 to December 1, and clarifies that the report must include findings from the previous school year.

Section 7 appropriates $10 million from the General Revenue Fund to the DOE for the development and training of VPK through grade 3 teachers, reading coaches and school principals on research-based reading instructional strategies and interventions for the 2017-2018 fiscal year.

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:

According to the Florida Department of Education, early learning coalitions and private VPK program providers may incur additional costs associated with training program delivery, distribution of pre- and post- assessment reports to parents, and issuing or tracking unique student identifiers.[31] Associated costs are indeterminable at this time.[32]

C. Government Sector Impact:

The bill appropriates $10 million from the General Revenue Fund to the DOE for the development and training of VPK through grade 3 teachers, reading coaches and school principals on research-based reading instructional strategies and interventions for the 2017-2018 fiscal year.

The bill also allows a child who is at risk of not attaining the performance standards specified in law to reenroll, at the request of the child's parent, in one of the school-year VPK programs offered by a provider that has met the adopted minimum readiness rate provided in law for the subsequent year. The cost of authorizing VPK reenrollment for these children is indeterminate.

According to the Department of Education, approximately 20 percent of all VPK children are not ready for kindergarten; therefore, approximately 20 percent of the 157,000 VPK students, or 31,000 children, could potentially opt to retake the school-year program at a projected cost of $75.5 million (31,000 x $2,437). However, the actual number of parents who would choose this option is unknown, as it is unlikely that most parents would choose to reenroll their child in VPK rather than attending kindergarten. Current law allows a parent to postpone enrollment in a VPK program for one year if the parents feels the children is not ready. Only 374 children statewide utilized this option in the 2016-2017 fiscal year.[33]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.215, 1002.53, 1002.67, 1002.69, 1002.71, and 1011.62.

[31] Florida Department of Education, *2017 Agency Legislative Bill Analysis for SB 468* (March 17, 2017), at 7.
[32] *Id.*
[33] Email, Florida Department of Education, Office of Early Learning (April 13, 2017).

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 Stargel

22-00377B-17 2017468__

A bill to be entitled

An act relating to voluntary prekindergarten education; amending s. 1001.215, F.S.; requiring the Just Read, Florida! Office to provide teachers, reading coaches, and principals in prekindergarten through grade 3 with specified training; amending s. 1002.53, F.S.; requiring each early learning coalition to coordinate with the Office of Early Learning to assign student identification numbers for the Voluntary Prekindergarten Education Program; amending s. 1002.67, F.S.; requiring voluntary prekindergarten providers to provide parents with pre- and post-assessment results within a specified timeframe; providing for the reporting and distribution of the results; requiring the office to determine eligibility criteria for reenrollment; amending s. 1002.69, F.S.; revising requirements for the adoption and use of the statewide kindergarten screening; conforming cross-references; amending s. 1002.71, F.S.; authorizing a child to reenroll in certain school-year programs under certain circumstances; amending s. 1011.62, F.S.; revising the date by which the Department of Education must submit specified information regarding the implementation of school district K-12 comprehensive reading plans to the Legislature; providing an appropriation; providing an effective date.

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

Section 1. Present subsections (3) through (11) of section 1001.215, Florida Statutes, are redesignated as subsections (4)

22-00377B-17 2017468__

through (12), respectively, a new subsection (3) is added to that section, and present subsection (3) of that section is amended, to read:

1001.215 Just Read, Florida! Office.—There is created in the Department of Education the Just Read, Florida! Office. The office shall be fully accountable to the Commissioner of Education and shall:

(3) Train Voluntary Prekindergarten through grade 3 teachers, reading coaches, and school principals on effective research-based reading instructional strategies and interventions for all students. Contingent upon legislative appropriation, this training must be designed to be consistently delivered statewide in an appropriate format. The office shall collaborate with the Office of Early Learning to develop the training.

(4)~~(3)~~ Train grade 4-12 ~~K-12~~ teachers and school principals on effective content-area-specific reading strategies. For secondary teachers, emphasis shall be on technical text. These strategies must be developed for all content areas in the grade 4-12 ~~K-12~~ curriculum.

Section 2. Paragraph (d) is added to subsection (4) of section 1002.53, Florida Statutes, to read:

1002.53 Voluntary Prekindergarten Education Program; eligibility and enrollment.—

(4)

(d) Each early learning coalition shall coordinate with the Office of Early Learning to assign student identification numbers to each student who enrolls in the Voluntary Prekindergarten Education Program.

Section 3. Paragraphs (a) and (c) of subsection (2) of section 1002.67, Florida Statutes, are amended, paragraphs (d) and (e) are added to subsection (3) of that section, present subsection (4) of that section is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

1002.67 Performance standards; curricula and accountability.—

(2)(a) Each private prekindergarten provider and public school may select or design the curriculum that the provider or school uses to implement the Voluntary Prekindergarten Education Program, except as otherwise required for a provider or school that is placed on probation under paragraph (5)(c) ~~(4)(c)~~.

(c) The office shall review and approve curricula for use by private prekindergarten providers and public schools that are placed on probation under paragraph (5)(c) ~~(4)(c)~~. The office shall maintain a list of the curricula approved under this paragraph. Each approved curriculum must meet the requirements of paragraph (b).

(3)

(d) Each private prekindergarten provider and public school in the Voluntary Prekindergarten Education Program shall provide parents with the results of the pre- and post-assessments, including any resources that might be helpful for their students, within 10 days after administration of the assessment.

(e) The results of the pre- and post-assessments must be reported at the aggregate level, distributed to the respective early learning coalitions and school districts, and displayed on the office's website within 30 days after administration of the assessment.

(4) The office shall determine the eligibility criteria for enrollment, as authorized by s. 1002.71(4)(c), and for reenrollment in the school year Voluntary Prekindergarten Education Program.

Section 4. Subsections (1) and (2) and paragraphs (a), (e), and (f) of subsection (7) of section 1002.69, Florida Statutes, are amended to read:

1002.69 Statewide kindergarten screening; kindergarten readiness rates; state-approved prekindergarten enrollment screening; good cause exemption.—

(1) The department shall adopt a single statewide kindergarten screening that assesses the readiness of each student for kindergarten based upon the performance standards adopted by the department under s. 1002.67(1) for the Voluntary Prekindergarten Education Program. The department shall require that each school district administer the statewide kindergarten screening to each kindergarten student in the school district within the first 30 school days of each school year. Nonpublic schools may administer the statewide kindergarten screening to each kindergarten student in a nonpublic school who was enrolled in the Voluntary Prekindergarten Education Program.

(2) The statewide kindergarten screening must ~~shall~~ provide objective data concerning each student's readiness for kindergarten and progress in attaining the performance standards adopted by the office under s. 1002.67(1), with an emphasis on early literacy and numeracy skills. The screening must be a direct assessment of these skills.

(7)(a) Notwithstanding s. 1002.67(5)(c)3. ~~s. 1002.67(4)(c)3.~~, the office, upon the request of a private

prekindergarten provider or public school that remains on probation for 2 consecutive years or more and subsequently fails to meet the minimum rate adopted under subsection (6) and for good cause shown, may grant to the provider or school an exemption from being determined ineligible to deliver the Voluntary Prekindergarten Education Program and receive state funds for the program. Such exemption is valid for 1 year and, upon the request of the private prekindergarten provider or public school and for good cause shown, may be renewed.

(e) A private prekindergarten provider or public school granted a good cause exemption shall continue to implement its improvement plan and continue the corrective actions required under s. 1002.67(5)(c)1. ~~s. 1002.67(4)(c)1.~~, including the use of a curriculum approved by the office, until the provider or school meets the minimum rate adopted under subsection (6).

(f) If a good cause exemption is granted to a private prekindergarten provider who remains on probation for 2 consecutive years, the office shall notify the early learning coalition of the good cause exemption and direct that the coalition, notwithstanding s. 1002.67(5)(c)3. ~~s. 1002.67(4)(c)3.~~, not remove the provider from eligibility to deliver the Voluntary Prekindergarten Education Program or to receive state funds for the program, if the provider meets all other applicable requirements of this part.

Section 5. Paragraph (c) is added to subsection (4) of section 1002.71, Florida Statutes, to read:

1002.71 Funding; financial and attendance reporting.—

(4) Notwithstanding s. 1002.53(3) and subsection (2):

(c) A child who is at risk of not attaining the performance

standards specified by s. 1002.67(1) may reenroll in one of the school-year programs, which is offered by a provider that has met the adopted minimum readiness rate provided under s. 1002.69(6), for the subsequent year at the request of the child's parent. The prekindergarten program may report the child for funding purposes as a full-time equivalent student in the school-year program for which he or she is enrolled.

A child may reenroll only once in a prekindergarten program under this section. A child who reenrolls in a prekindergarten program under this subsection may not subsequently withdraw from the program and reenroll, unless the child is granted a good cause exemption under this subsection. The Office of Early Learning shall establish criteria specifying whether a good cause exists for a child to withdraw from a program under paragraph (a), whether a child has substantially completed a program under paragraph (b), and whether an extreme hardship exists which is beyond the child's or parent's control under paragraph (b).

Section 6. Paragraph (d) of subsection (9) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(9) RESEARCH-BASED READING INSTRUCTION ALLOCATION.—

(d) Annually, by a date determined by the Department of

Education but before May 1, school districts shall submit a K-12 comprehensive reading plan for the specific use of the research-based reading instruction allocation in the format prescribed by the department for review and approval by the Just Read, Florida! Office created pursuant to s. 1001.215. The plan annually submitted by school districts shall be deemed approved unless the department rejects the plan on or before June 1. If a school district and the Just Read, Florida! Office cannot reach agreement on the contents of the plan, the school district may appeal to the State Board of Education for resolution. School districts shall be allowed reasonable flexibility in designing their plans and shall be encouraged to offer reading intervention through innovative methods, including career academies. The plan format shall be developed with input from school district personnel, including teachers and principals, and shall allow courses in core, career, and alternative programs that deliver intensive reading remediation through integrated curricula, provided that the teacher is deemed highly qualified to teach reading or is working toward that status. No later than July 1 annually, the department shall release the school district's allocation of appropriated funds to those districts having approved plans. A school district that spends 100 percent of this allocation on its approved plan shall be deemed to have been in compliance with the plan. The department may withhold funds upon a determination that reading instruction allocation funds are not being used to implement the approved plan. The department shall monitor and track the implementation of each district plan, including conducting site visits and collecting specific data on expenditures and reading improvement

results. By December ~~February~~ 1 of each year, the department shall report its findings from the previous school year to the Legislature.

Section 7. For the 2017-2018 fiscal year, the sum of $10 million from the General Revenue Fund is appropriated to the Department of Education for the development of training for Voluntary Prekindergarten through grade 3 teachers, reading coaches, and school principals on research-based reading instructional strategies and interventions.

Section 8. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR KELLI STARGEL
22nd District

April 19, 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 committee agenda at your earliest convenience:

- **SB 468**, related to *Voluntary Prekindergarten Education.*
- **SB 780**, related to *Adoption Benefits*; the House companion, HB 749, has been placed on special order calendar.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

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)

4/25
Meeting Date

463
Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Kelly Quinteno

Job Title Legislative Advocate

Address 540 Beverly Ct
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 772-204-1792

Email lwvfadvocacy@gmail.com

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.

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)

4/25/2017
Meeting Date

Topic _____ Bill Number 468 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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.

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

S-001 (10/20/11)

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

~~456~~ 468
Bill Number (if applicable)

Topic Voluntary Pre-K

Amendment Barcode (if applicable)

Name Beth Overholt

Job Title

Address 4130 Faulkner Lane
Street
Tallahassee 32311
City *State* *Zip*

Phone 728-0587

Email overholtbeth2@gmail.

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Stop Common Core Coalition

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)

4/25/17
Meeting Date

SB 468
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic VPK

Name Brittney Hunt

Job Title Policy Director

Address 136 S. Bronough St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone (850) 521-1200

Email bhunt@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida 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.

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)

4/25/17
Meeting Date

4168
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Voluntary PreK

Name Colleen Mackin

Job Title Constituency Services

Address 101 S. Magnolia Dr
Street
Tallahassee FL
City *State* *Zip*

Phone 850-425-2600

Email CMackin@iamforkids.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Children's Campaign

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 780
INTRODUCER:	Education Committee and Senator Stargel
SUBJECT:	Adoption Benefits
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Androff	Graf	ED	**Fav/CS**
2.	Sneed	Williams	AHS	**Recommend: Favorable**
3.	Sneed	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 780 expands the definition of qualifying adoptive employee to include full-time or part-time employees of charter schools and the Florida Virtual School (FLVS) for the purpose of extending to the employees of such schools the benefits that are currently available to qualifying adoptive employees of state agencies. The State Employee Adoption Benefit Program administered through the Department of Children and Families (DCF) allows qualifying employees who adopt a child from the child welfare system to receive a one-time benefit of $5,000, or $10,000 for the adoption of a child with special needs. The bill also provides that charter and FLVS employees who were employees of charter schools or FLVS on or after July 1, 2015 that adopted a child from DCF during that time may retroactively apply for the adoption benefit.

The State Employee Adoption Benefit Program has a $2.75 million recurring appropriation from the General Revenue Fund. The annual cost to expand participation in the program to charter school and FLVS employees is currently indeterminate. If funding is insufficient to absorb the increased number of participants, applicants may reapply for the adoption benefit payments the following year.

The bill takes effect July 1, 2017.

II. Present Situation:

In Florida, the Department of Children and Families (DCF) provides child welfare services.[1] Florida law requires that child welfare services, including adoption services, be delivered through community-based care (CBC) lead agencies contracted by DCF.[2] For example, CBCs provide pre- and post-adoption services and administer maintenance adoption subsidies that provide ongoing financial support for children adopted from the foster care system.

The State Employee Adoption Incentive Program

The State Employee Adoption Incentive Program (Program) was reenacted in July 1, 2015.[3] The original program, enacted in 2000,[4] was repealed in 2010.[5] The program was designed to increase the number of adoptions in Florida by offering an incentive to certain state employees and other applicants.[6] The program provides a lump-sum benefit payment for the adoption of a child within the child welfare system ($5,000), and a higher benefit amount for adoptions of children with special needs within the child welfare system ($10,000).[7]

The program is currently available to both full and part-time employees of a state agency who are paid from regular salary appropriations.[8] A "qualifying adoptive employee" includes individuals who are regular, and not temporary, employees of:[9]

- A branch, department, or agency of state government for which the Chief Financial Officer processes payroll requisitions;
- A state university or Florida College System institution as defined in law;
- A school district unit as defined in law;
- A water management district as defined in law;
- The Florida School for the Deaf and Blind (limited to instructional personnel as defined in law).

The receipt of a benefit payment through the program does not preclude the employee from receiving adoption assistance under any other state program.[10] The program's capacity is limited by the amount of funds appropriated for the program.[11] Payments under the program are based

[1] Section 20.19(4)(a)3., F.S.
[2] Section 409.986(1), F.S.
[3] Section 6, ch. 2015-130, L.O.F.
[4] Section 1, ch. 2000-241, L.O.F.
[5] Chapter 2010-158, L.O.F.
[6] Chapter 2010-158, L.O.F. Currently the following applicants who adopt a child within the child welfare system after July 1, 2015 are eligible for the program: full or part-time employees of the state (Executive, Legislative and Judicial Branches, including the Department of the Lottery), the state universities, community colleges, school districts, water management districts and instructional personnel employed by the Florida School for the Deaf and Blind, provided the employee is paid from regular salary appropriations (not OPS or otherwise "temporary" or casual labor). In state fiscal year 2015-2016, 139 applicants received the State Employee Adoption Incentive benefit. Florida Department of Children and Family, *SB 780 Analysis* (2014), at 2.
[7] Section 409.1664, F.S. Section 409.166(2)(a), F.S. defines a special needs child for purposes of the State Employee Adoption Incentive Program.
[8] Section 409.1664(1)(b), F.S.
[9] *Id.* at (1)(c).
[10] *Id.* at (4).
[11] *Id.* at (2)(c).

solely on the employment relationship between the employed individual and the employing state entity.

Charter Schools

Charter schools are nonsectarian, public schools that operate under a performance contract with a sponsor. The performance contract is known as a "charter."[12] One of the guiding principles of charter schools is to "meet high standards of student achievement while providing parents the flexibility to choose among diverse educational opportunities within the state's public school system."[13]

The Florida Virtual School

The Florida Virtual School (FLVS) was established for the development and delivery of online and distance learning education.[14] The mission of the FLVS is to provide students with technology-based educational opportunities to gain the knowledge and the skills necessary to succeed.[15] The FLVS is a fully accredited public school choice providing elementary, middle, and high school curriculum to Florida residents for free. All courses are provided online.[16]

III. Effect of Proposed Changes:

This bill expands the definition of qualifying adoptive employee to include a full-time or part-time employee of a charter school and the Florida Virtual School (FLVS) for the purpose of extending to the employees of such schools the benefits specified in law for qualifying adoptive employees of state agencies. Extending the state employee adoption benefit to additional employees may increase the number of children adopted from the foster care system in Florida.

The bill also provides that a qualifying adoptive employee of a charter school and the FLVS may retroactively apply for the adoption benefit under certain conditions. The employee may apply for retroactive benefits if he or she was employed by a charter school or the FLVS at the time of the adoption of a child from the child welfare system and if the adoption occurred on or after July 1, 2015. Authorizing retroactive adoption benefits may provide financial support to qualifying adoptive employees of charter schools and the FLVS who have adopted a child under these circumstances.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[12] Section 1002.33(5)(a), (6)(h), (7) and (9)(a), F.S.
[13] *Id.* at (2)(a)1.
[14] Section 1002.37(1)(a), F.S.
[15] *Id.* at (b).
[16] Florida Virtual School, *Accreditation*, https://www.flvs.net/meet-flvs/accreditation (last visited March 20, 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:

Under the bill, private individuals who are employed by a charter school or the FLVS who adopt a child from the Department of Children and Families (DCF) and meet the guidelines of the State Employee Adoption Benefit program may receive $5,000 for a non-special needs child or $10,000 for a special needs child.[17]

C. Government Sector Impact:

DCF receives annual recurring funding of $2.75 million for the State Employee Adoption Benefit Program. Program award payments of $1,469,145 were made in Fiscal Year 2015-2016 to 139 applicants. Applications for benefits must be submitted to DCF during an "open enrollment' period (March 1 through April 30). Although the FY 2016-2017 open enrollment period is currently underway, the department reported that a total of 182 applications have been received as of April 12, 2017. A full accounting of the benefit payment information for FY 2016-2017 will not be available until open enrollment ends on April 30. Based on prior year expenditures, the applications received to date could total approximately $1.9 million.

The additional adoption benefits to expand participation to charter school and FLVS employees is indeterminate.

Adoption award payments are disbursed to qualified applicants on a first-come, first served basis. If sufficient funding is not available to pay an eligible applicant, the applicant may reapply for the adoption benefit the following year.

VI. Technical Deficiencies:

None.

[17] Florida Department of Children and Family, *SB 780 Analysis* (2014), at 3.

VII. Related Issues:

Section 215.425, F.S., relates to the prohibition on extra compensation claims, bonuses, and severance pay for state employees. Subsection (1) stipulates that no extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made, nor shall any money be appropriated or paid on any claim the subject matter of which has not been provided for by preexisting laws, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature. Given these statutory restrictions, the retroactive payment provisions of this bill may require a two-thirds vote of the Legislature in order to withstand a challenge under this statute.

VIII. Statutes Affected:

This bill substantially amends section 409.1664 of the Florida Statutes.

IX. Additional Information:

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

CS by Education on March 21, 2017:
The committee substitute revises the definition of qualifying adoptive employee to include employees of charter schools and the Florida Virtual School (FLVS) for purposes of the State Employee Adoption Incentive Program. The committee substitute also authorizes qualifying employees of charter schools and the FLVS to apply for retroactive benefits under the program.

B. Amendments:

None.

By the Committee on Education; and Senator Stargel

581-02685-17 2017780c1

A bill to be entitled

An act relating to adoption benefits; amending s. 409.1664, F.S.; revising the definition of the term "qualifying adoptive employee" to include persons employed by charter schools and the Florida Virtual School for the purpose of extending adoption benefits to those employees; authorizing such employees of charter schools and the Florida Virtual School to apply retroactively for the adoption benefit in certain circumstances; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) and subsections (3) and (7) of section 409.1664, Florida Statutes, are amended, and paragraph (d) is added to subsection (2) of that section, to read:

409.1664 Adoption benefits for qualifying adoptive employees of state agencies.—

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

(b) "Qualifying adoptive employee" means a full-time or part-time employee of a state agency, a charter school as defined in s. 1002.33, or the Florida Virtual School established under s. 1002.37 who is paid from regular salary appropriations, or otherwise meets his or her ~~the state agency~~ employer's definition of a regular rather than temporary employee, and who adopts a child within the child welfare system pursuant to chapter 63 on or after July 1, 2015. The term includes instructional personnel, as defined in s. 1012.01, who are

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employed by the Florida School for the Deaf and the Blind.

(2) A qualifying adoptive employee who adopts a child within the child welfare system who has special needs described in s. 409.166(2)(a)2. is eligible to receive a lump-sum monetary benefit in the amount of $10,000 per such child, subject to applicable taxes. A qualifying adoptive employee who adopts a child within the child welfare system who does not have special needs described in s. 409.166(2)(a)2. is eligible to receive a lump-sum monetary benefit in the amount of $5,000 per such child, subject to applicable taxes.

(d) A qualifying adoptive employee of a charter school or the Florida Virtual School may retroactively apply for the adoption benefit if he or she was employed by a charter school or the Florida Virtual School at the time of the adoption of a child from the child welfare system pursuant to chapter 63 and the adoption occurred on or after July 1, 2015.

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

(7) The Chief Financial Officer shall disburse a monetary benefit to a qualifying adoptive employee upon the department's submission of a payroll requisition. The Chief Financial Officer

shall transfer funds from the department to a state university, Florida College System institution, school district unit, charter school, the Florida Virtual School, or water management district, as appropriate, to enable payment to the qualifying adoptive employee through the payroll systems as long as funds are available for such purpose.

Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR KELLI STARGEL
22nd District

April 19, 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 committee agenda at your earliest convenience:

- **SB 468**, related to *Voluntary Prekindergarten Education.*
- **SB 780**, related to *Adoption Benefits*; the House companion, HB 749, has been placed on special order calendar.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

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

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 880
INTRODUCER:	Appropriations Committee; Community Affairs Committee; and Senator Stargel
SUBJECT:	Government Accountability
DATE:	April 27, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Fav/CS**
2.	Shettle, McVaney	Hansen	AP	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 880 amends statutes to enhance government accountability and auditing, based on recommendations noted in recent reports by the Auditor General. The bill:

- Specifies that the Governor or Commissioner of Education, or designee, may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements;
- Provides definitions for the terms "abuse," "fraud," and "waste;"
- Adds tourist development council and county tourism promotion agency to the definition of "local government entity;"
- States that local government entities do not include water management districts for the purposes of s. 11.45(2), F.S.;
- Includes tourist development councils and county tourism promotion agencies in the list of entities that the Auditor General may audit;
- Requires the Florida Clerks of Court Operations Corporation to notify quarterly the Legislature of any clerk not meeting workload performance standards;
- Requires each agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Guardian Ad Litem program, local governmental entities, charter schools, school districts, Florida College System institutions, and state universities to establish and maintain internal controls;
- Limits the amount that may be reimbursed per day for state agency and judicial branch employee lodging expenses for travel under certain circumstances to $150;

- Requires all governmental entities to use the statewide travel management system;
- Requires counties, municipalities, and water management districts to maintain certain budget documents on their websites for specified timeframes;
- Revises the monthly financial statement requirements for water management districts;
- Provides that the Department of Financial Services may request additional information from local government entities when preparing its annual verified report;
- Requires a local governmental entity, district school board, charter school, or charter technical career center, Florida College System board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances;
- Requires an independent certified public accountant conducting an audit of a local governmental entity to determine, as part of the audit, whether the entity's annual financial report is in agreement with the entity's audited financial statements;
- Revises the composition of auditor selection committees;
- Requires completion of an annual financial audit of the Florida Virtual School; and
- Prohibits a board or commission from requiring a member of the public to provide an advance written copy of his or her testimony or comments as a precondition of being given the opportunity to be heard.

The bill is expected have an indeterminate impact on state and local government expenditures.

II. Present Situation:

Various statutes ensure government accountability of state and local governments. For example, the Auditor General conducts audits of accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems. The Auditor General also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers. Other statutes require publishing of government budgets and other information online and require government entities to follow certain practices to promote efficiency and compliance within the entity.

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Auditing

Present Situation

The position of Auditor General is established by Art. III, s. 2 of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.[1] The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.[2] At the time of appointment, the

[1] Section 11.42(2), F.S.
[2] Section 11.42(5), F.S.

Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at least 10 years and may not have less than 10 years' experience in an accounting or auditing related field.[3]

The Auditor General must conduct audits, examinations, or reviews of government programs[4] as well as audit the accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee.[5] The Auditor General conducts operational and performance audits on public records and information technology systems and also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.[6]

Various provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.[7] The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee an annual report by December 1. The report must include a 2-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General.[8] In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.[9]

The annual report for the Auditor General for November 1, 2015, through October 31, 2016, contained the following recommendation:[10]

> The Legislature should consider amending applicable Florida Statutes to establish in law the responsibility of each State and local government for the establishment and maintenance of management systems and internal controls designed to prevent and detect fraud, waste, and abuse; promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices; support economical and efficient operations; ensure reliability of financial records and reports; and safeguard assets.

Section 11.45, F.S., defines the types of audits the Auditor General may conduct. That section requires certain state and local governmental audits to be conducted and specifies the frequency with which the audits must occur. The Auditor General also may conduct other audits he or she determines to be appropriate.

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[3] Section 11.42(2), F.S.
[4] Section 11.45(7), F.S.
[5] Section 11.45(2)(d)-(f), F.S.
[6] Section 11.45(7)(b), F.S.
[7] Section 11.45(7)(f), F.S.
[8] Section 11.45(7)(h), F.S.
[9] *Id.*
[10] A copy of the report can be found online at: http://www.myflorida.com/audgen/pages/annualrpt.htm (last visited March 9, 2017).

Following notification by the Auditor General, the Department of Financial Services (DFS), or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with applicable auditing, financial reporting, bond issuance notification, or bond verification provisions or the failure to disclose a financial emergency or provide information required during a financial emergency,[11] the Legislative Auditing Committee may schedule a hearing to determine whether the entity should be subject to further state action. For purposes of s. 11.45, F.S., the term "local governmental entity" means a county agency, municipality, or special district as defined in s. 189.012, F.S.,[12] but does not include any housing authority established under ch. 421, F.S.

The Auditor General is also required to annually transmit, by July 15, to the President of the Senate, the Speaker of the House of Representatives, and DFS a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and water management districts (WMDs) that have failed to comply with certain transparency requirements.

Effect of the Bill

Section 1 amends s. 11.40, F.S., to authorize the Governor or his or her designee, and the Commissioner of Education or his or her designee, to notify the Legislative Auditing Committee that a local governmental entity, district school board, charter school, or charter technical career center has failed to comply with applicable auditing, financial reporting, bond issuance notification, or bond verification provisions or failed to disclose a financial emergency or provide information required during a financial emergency.

Section 2 amends s. 11.45, F.S., to define the terms abuse, fraud, and waste. These terms are related to the internal controls various government agencies must establish and maintain to prevent and detect fraud, waste, and abuse.

This section expands the definition of "local governmental entity" to include tourist development council and county tourism promotion agency. With this expanded definition, the Auditor General is authorized to conduct audits or other engagements of tourist development councils and county tourism promotion agencies.

This section exempts WMDs from being subject to audits of local governmental entities conducted pursuant to s. 11.45(2)(j), F.S. With this change, the WMDs will be subject only to the

[11] Section 11.45, F.S., governs certain audits to be conducted by the Auditor General. Section 218.32(1), F.S., requires annual financial reports from local governmental entities. Section 218.38, F.S., requires notice of bond issuance and contains verification requirements. Section 218.503(3), F.S., requires certain entities to disclose a financial emergency and provide certain information concerning a financial emergency.

[12] Section 189.012(6), F.S., defines a "special district" to mean a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

periodic audits authorized by s. 11.45(2)(f), F.S.,[13] rather than audits requested by the Legislative Auditing Committee or when deemed necessary by the Auditor General.

This section expands the list of entities that must be included in the Auditor General report concerning entities that fail to comply with transparency requirements in s. 11.45, F.S., to include all local governmental entities rather than just the WMDs.

Florida Clerks of Court Operations Corporation

Present Situation

Currently, s. 28.35, F.S., requires the Florida Clerks of Court Operations Corporation (corporation) to develop and certify a uniform system of workload measures and applicable workload standards for court-related functions as developed by the corporation and clerk workload performance in meeting the workload performance standards. These workload measures and workload performance standards must be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The corporation must develop the workload measures and workload performance standards in consultation with the Legislature. When the corporation finds a clerk has not met the workload performance standards, the corporation must identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court. The corporation must notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans.

Effect of the Bill

Section 3 amends s. 28.35, F.S., to require the corporation to notify the Legislature of any clerk not meeting the workload performance standards and provide a copy of any corrective action plans within 45 days after the end of each quarter. For purposes of s. 28.35, F.S., the quarters end on the last day of March, June, September, and December of each year.

Public Employee Travel Expenses

Present Situation

Section 112.061, F.S., establishes the rates of per diem and subsistence allowance for travel by public officers and employees. When traveling to a convention or conference or to conduct bona fide state business, a traveler is authorized to receive $80 per diem. However, if actual expenses exceed $80, the traveler may receive $6 for breakfast, $11 for lunch, $19 for dinner, and the actual expenses for lodging at a single-occupancy rate.

The 2016-17 implementing bill created a limit on the amount of actual expenses for lodging that may be reimbursed under certain circumstances. The bill provided that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for

[13] Section 11.45(2)(f), F.S. states in part that at least every 3 years, the Auditor General shall conduct operational audits of the accounts and records of water management districts.

lodging expenses may not exceed $150 per day. However, an employee may expend his or her own funds for any lodging expenses in excess of the limit. This limit is in effect until July 1, 2017.

Section 112.061(2)(a), F.S., defines the term "agency or public agency" to mean any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law.

Proviso in specific appropriation 1965A of ch. 2016-66, L.O.F., provided $1,800,000 in recurring General Revenue Funding to the Executive Office of the Governor (EOG) to acquire a statewide travel management system (system). EOG was required to undertake a competitive procurement for the system pursuant to s. 287.057, F.S. Additionally, $2,800,000 in nonrecurring General Revenue Funding was provided to executive branch state agencies and the judicial branch for the implementation of the system.

The system was required to be able to electronically: interface with the Florida Accounting Information Resource Subsystem (FLAIR) and the Personnel Information System; generate uniform travel authorization request and travel voucher forms pursuant to s. 112.061, F.S.; and receive approvals for travel. The system was also required to include search features that query travel information by specific criteria. Proviso also required EOG and the Legislature to have access to the system for purposes of generating reports on all travel completed by executive branch state agencies and the judicial branch.

Effect of the Bill

Section 5 amends s. 112.061, F.S., to limit the reimbursement of lodging expenses associated with the attendance at a meeting, conference, or convention organized or sponsored by a state agency or judicial branch. Such reimbursement cannot exceed $150 per day for executive and judicial branch employees. The section clarifies that a "meeting" does not include the travel activities associated with an audit, examination, or inspection or the travel activities relating to litigation or an emergency response.

The section also codifies the definitions and requirements pertaining to the statewide travel management system. By referring to "agency", this section will require all agencies, including local governments, to report public officer and employee travel information in the system.

Florida Single Audit Act

Present Situation

The Florida Single Audit Act, codified in s. 215.97, F.S., is designed to:

- Establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects;
- Promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities;
- Promote audit economy and efficiency by relying to the extent possible on already required audits of federal financial assistance provided to nonstate entities;

- Provide for identification of state financial assistance transactions in the state accounting records and recipient organization records;
- Promote improved coordination and cooperation within and between affected state agencies providing state financial assistance and nonstate entities receiving state assistance; and
- Ensure, to the maximum extent possible, that state agencies monitor, use, and follow-up on audits of state financial assistance provided to nonstate entities.

Pursuant to the Florida Single Audit Act, certain entities that meet the "audit threshold" requirements are subject to a state single audit or a project-specific audit. Currently, the "audit threshold" requires each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such nonstate entity to have a state single audit, or a project-specific audit, for such fiscal year. Every 2 years, the Auditor General, after consulting with the Executive Office of the Governor, DFS, and all state awarding agencies, is required to review the threshold amount for requiring audits and may adjust the threshold amount.[14]

Effect of the Bill

Section 10 amends s. 215.97, F.S., to change the requirement that the Auditor General review the threshold amount for requiring audits from every 2 years to "periodically;" however, the term "periodically" is not defined. This section also authorizes the Auditor General to recommend to the Legislature a statutory change to revise the threshold amount in its annual report.

Annual Financial Audit Reports

Present Situation

If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, an entity meeting certain requirements must have an annual financial audit of its accounts and records completed within 9 months after the end of its fiscal year by an independent certified public accountant.[15] Section 218.39, F.S., specifies the minimum required information for the independent audits and provides for discussion between the governing body and the independent certified public accountant regarding certain specified conditions. If corrective action is required and has not been taken, the Legislative Auditing Committee can request a statement explaining why the corrective action has not been taken and take certain steps to determine whether the entity should be subject to further state action.[16]

Effect of the Bill

Section 14 amends s. 218.39, F.S., to provide that if an audit report contains a recommendation that was included in the preceding financial audit report but remains unaddressed, the governing body of the audited entity, within 60 days after delivery of the audit report to the governing body, must indicate during a regularly scheduled public meeting whether it intends to take a corrective action, the corrective action to be taken, and when the corrective action will occur. If

[14] Section 215.97(2)(a), F.S.
[15] Section 218.39(1), F.S.
[16] Section 11.40(2), F.S.

the governing body does not intend to take any corrective action, it must explain its decision at the public meeting.

Auditor Selection Procedures

Present Situation

Section 218.391, F.S., outlines the process that each local governmental entity, district school board, charter school, or charter technical career center must follow in selecting an auditor to conduct the annual financial audit of the entity required by s. 218.39, F.S. Each entity is required to establish an audit committee to assist the governing body in selecting the auditor. Each noncharter county's audit committee must consist of each of its officers elected pursuant to the State Constitution and one member of the board of county commissioners or its designee. The audit committees must publicly announce requests for proposals for the audit services. The law specifies the factors that must be considered in selecting the auditor and the procedures for negotiating for compensation.

Effect of the Bill

Section 15 amends s. 218.391, F.S., to require every county's audit committee to consist of each county officer elected pursuant to the State Constitution or the county charter, or their respective designees, and one member of the board of county commissioners or its designee. The section requires the audit committee for a municipality, special district, district school board, charter school, or charter technical career center to consist of at least three members, one of whom must be a member of the governing body of the entity. That member must serve as the audit committee's chair. An employee, chief executive officer, or chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may not serve as a member of an audit committee.

For each of the annual financial audits, certain information relating to the selection of the auditor and the contract for such services must be included in the management letter. If an entity fails to select an auditor in compliance with the new process, the Legislative Auditing Committee must determine whether the entity should be subject to state action pursuant to 11.40(2), F.S.

The Florida Virtual School

Present Situation

The Florida Virtual School was created to develop and deliver online and distance learning education.[17] The Commissioner of Education is charged with monitoring the Florida Virtual School. In pertinent part, the law requires the board of trustees to submit an annual report to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education (SBE) that must address:

- The operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global;

[17] Section 1002.37(1)(a), F.S.

- The marketing and operational plan for the Florida Virtual School and Florida Virtual School Global, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning technology;
- The assets and liabilities of the Florida Virtual School and Florida Virtual School Global at the end of the fiscal year;
- A copy of an annual financial audit of the accounts and records of the Florida Virtual School and Florida Virtual School Global, conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General;
- Recommendations regarding the unit cost of providing services to students through the Florida Virtual School and Florida Virtual School Global; and
- Recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by the Florida Virtual School and Florida Virtual School Global.[18]

The Auditor General must conduct an operational audit of the Florida Virtual School, including Florida Virtual School Global.[19] The scope of the audit must include, but is not limited to, the administration of responsibilities relating to personnel; procurement and contracting; revenue production; school funds, including internal funds; student enrollment records; franchise agreements; information technology utilization, assets, and security; performance measures and standards; and accountability. The law specifies that the final report on the audit must be submitted to the President of the Senate and the Speaker of the House of Representatives no later than January 31, 2014.[20]

Effect of the Bill

Section 20 amends s. 1002.37, F.S., to require the Florida Virtual School to have an annual financial audit of its accounts and records conducted by an independent auditor who is a licensed certified public accountant. The independent auditor must conduct the audit in accordance with rules adopted by the Auditor General and must prepare an audit report in accordance with such rules. The audit report must include a written statement by the board of trustees describing corrective action to be taken in response to each of the independent auditor's recommendations. The independent auditor must submit the audit report to the board of trustees and the Auditor General no later than 9 months after the end of the preceding fiscal year.

This section also eliminates an obsolete requirement for the Auditor General to conduct an operational audit and submit a report to the presiding officers by January 31, 2014.

Local Governmental Entity Annual Financial Reports

Present Situation

Section 218.32, F.S., requires local governmental entities that are required to provide for an audit under s. 218.39, F.S., to submit an audit report and annual financial report to DFS within 45 days after completion of the audit report, but no later than 9 months after the end of the fiscal year. The annual financial report must be signed by the chair of the governing body and the chief

[18] Section 1002.37(6), F.S.
[19] Section 1002.37(11), F.S.
[20] *Id.*

financial officer of the local governmental entity. The law also specifies the information that must be included in the report.

In addition, DFS is required to file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report.[21]

Effect of the Bill

Section 12 amends s. 218.32, F.S., to require an independent certified public accountant conducting an audit of a local governmental entity pursuant to s. 218.39, F.S., to determine, as part of the audit, whether the entity's annual financial report is in agreement with the entity's audited financial statements. If the audited financial statements are not in agreement with the annual financial report, the section requires the accountant to specify in the audit report the significant differences that exist between the audited financial statements and the annual financial report.

This section also authorizes DFS, in preparing the verified report, to request additional information from the local governmental entity. Any additional information requested must be provided to DFS within 45 days after the request. If the local governmental entity does not comply with the request, DFS must notify the Legislative Auditing Committee, which may take action pursuant to s. 11.40(2), F.S.

Required Audits of Certain Educational Institutions

Present Situation

School districts, Florida College System institutions, and other institutions and agencies under the supervision of the State Board of Education (SBE) and state universities under the supervision of the Board of Governors (BOG) are subject to the audit provisions of ss. 11.45 and 218.39, F.S. If an audit contains a significant finding, the district school board, the Florida College System institution board of trustees, or the university board of trustees is required to conduct an audit overview during a public meeting.[22]

Effect of the Bill

Section 22 amends s. 1010.30, F.S., to provide that if an audit report includes a recommendation that was included in the preceding financial audit report but remains unaddressed, the district school board, the Florida College System institution board of trustees, or the university board of trustees must indicate during a regularly scheduled public meeting whether it intends to take corrective action, the corrective action to be taken, and when the corrective action will occur within 60 days after the delivery of the audit report. If the district school board, Florida College

[21] Section 218.32(2), F.S.
[22] Section 1010.30(2), F.S.

System institution board of trustees, or university board of trustees does not intend to take corrective action, it must explain its decision at the public meeting.

Internal Controls to Prevent and Detect Fraud, Waste, and Abuse

Present Situation

State Agencies and the Judicial Branch

Section 215.86, F.S., requires each state agency and the judicial branch as defined in s. 216.011, F.S., to establish and maintain management systems and controls that promote and encourage compliance; economic, efficient, and effective operations; reliability of records and reports; and safeguarding of assets. It requires accounting systems and procedures to be designed to fulfill the requirements of generally accepted accounting principles.

Local Governmental Entities

Section 218.33, F.S., requires each local governmental entity to begin its fiscal year on October 1 and end it on September 30. Section 218.33(2), F.S., requires each local governmental entity to follow uniform accounting practices and procedures as provided by rule of DFS to assure the use of proper accounting and fiscal management by such units. Such rules must include a uniform classification of accounts.

Charter Schools

Section 1002.33, F.S., authorizes charter schools as part of Florida's state program of education. In addition to creating charter schools, that section also imposes certain requirements on charter schools. In pertinent part, the law provides that the governing body of a charter school is responsible for:

- Ensuring that the charter school has retained a certified public accountant or auditor to perform its annual audit;
- Reviewing and approving the audit report;
- Establishing a corrective plan, if necessary;
- Monitoring a financial recovery plan to ensure compliance; and
- Participating in governance training approved by the Department of Education, which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.[23]

School Districts, Florida College System Institutions, and State Universities

Current law requires the financial records and accounts of each school district, Florida College System institution, and other institution or agency under the supervision of the SBE to be prepared and maintained as prescribed by law and rules of the SBE. The financial records and accounts of each state university under the supervision of the BOG must be prepared and maintained as prescribed by law and rules of the BOG. Rules of the SBE and rules of the BOG must incorporate the requirements of law and accounting principles generally accepted in the United States and must include a uniform classification of accounts. Each state university must annually file with the BOG financial statements prepared in conformity with these requirements.

[23] Section 1002.33(9)(j), F.S.

The BOG's rules must prescribe the filing deadline for the financial statements. The required financial accounts and reports must include provisions that are unique to K-12 school districts, Florida College System institutions, and state universities.[24]

Justice Administrative Commission

The Justice Administrative Commission (Commission) is created in s. 43.16, F.S. As one of its duties, the Commission is charged with maintaining a central state office for administrative services and assistance on behalf of state attorneys and public defenders, the capital collateral regional counsel, the criminal conflict and civil regional counsel, and the Guardian Ad Litem Program.[25] Additionally, the Commission records and submits certain documents prepared by a state attorney, public defender, or criminal conflict and civil regional counsel or the Guardian Ad Litem Program, including necessary budgets, vouchers that represent valid claims for reimbursement by the state for authorized expenses, and other things incidental to the proper administrative operation of the office, such as revenue transmittals to the Chief Financial Officer and automated systems plans.[26]

Effect of the Bill

Sections 4, 9, 13, 19, and 21 amend ss. 43.16, 215.98, 218.33, 1002.33, and 1010.01, F.S., respectively, to require state agencies, the judicial branch, local governmental entities, charter schools, school districts, Florida College System institutions, state universities, the Commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program to establish and maintain internal controls designed to:

- Prevent and detect fraud, waste, and abuse, as defined in s. 11.45(1), F.S.;
- Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices;
- Support economical and efficient operations;
- Ensure reliability of financial records and reports; and
- Safeguard assets.

Section 18 amends s. 1001.42, F.S., to authorize a district school board to retain an internal auditor to determine:

- The adequacy of internal controls designed to prevent and detect fraud, waste, and abuse.
- Compliance with applicable laws, rules, contracts, grant agreements, district school board-approved policies, and best practices.
- The efficiency of operations.
- The reliability of financial records and reports.
- The safeguarding of assets.

[24] Section 1010.01, F.S.
[25] Section 43.16(5)(a), F.S.
[26] Section 43.16(5)(b), F.S.

Online Posting of Governmental Budgets

Counties and Municipalities

Present Situation

Counties[27] and municipalities[28] are required to post their tentative budgets on their websites 2 days prior to consideration of the budget at a public hearing. The final budget of a county or municipality must be posted on its website within 30 days after adoption. An amendment to a budget must be posted to the website within 5 days of adoption.[29] Current law does not specify how long these documents must remain available on the website.

Effect of the Bill

Sections 6, 7, and 8 amend ss. 129.03, 129.06, and 166.241, F.S., respectively, to require a tentative budget to remain on a county or municipality's website for at least 45 days. The sections also requires a final budget to remain on the entity's website for at least 2 years. Finally, the sections requires an adopted amendment to a budget to remain on the website for at least 2 years.

Water Management Districts

Present Situation

Chapter 373, F.S., governs Florida's water resource management and authorizes the creation of WMDs, which are given taxing authority. A WMD is defined as "any flood control, resource management, or water management district" operating under the authority of ch. 373, F.S.[30] There are five WMDs in Florida: Northwest Florida, Suwanee River, St. Johns River, Southwest Florida, and South Florida.[31] Section 373.536, F.S., governs the budget process for WMDs and requires a WMD's tentative budget to be posted on the WMD's website at least 2 days before budget hearings are conducted. The law requires a WMD's final adopted budget to be posted on the WMD's official website within 30 days after adoption.

Effect of the Bill

Section 17 amends s. 373.536, F.S., to require a WMD's tentative budget to remain on the WMD's website for at least 45 days and requires the final adopted budget to remain on the website for at least 2 years.

Transparency in Government Spending

Present Situation

The Transparency Florida Act (Act), codified in s. 215.985, F.S., requires the Governor, in consultation with the appropriations committees of the House and Senate, to maintain a central website providing access to all other websites required to be linked under the Act. It also requires

[27] Section 129.03, F.S.
[28] Section 166.241, F.S.
[29] Sections 129.06(2)(f)2., 166.241(5), and 189.016(7), F.S.
[30] Section 373.019(23), F.S.
[31] Section 373.069(1), F.S.

certain budget information, certain contract information, and minimum functionality standards to be readily available online. In pertinent part, s. 215.985(11), F.S., requires each WMD to provide a monthly financial statement to its governing board and make the statement available for public access on its website.

Effect of the Bill

Section 11 amends s. 215.985, F.S., to require a WMD's monthly financial statement to be in the form and manner prescribed by DFS and requires each WMD to make the monthly financial statement available to the public on its website.

Reasonable Opportunity to be Heard at Public Meetings

Present Situation

Section 286.0114, F.S., requires, with certain exceptions, that members of the public be provided a reasonable opportunity to be heard before a board or commission. The law describes a general public comment process and allows entities to prescribe how public comment is made and create certain reasonable limitations.

Effect of the Bill

Section 16 amends s. 286.0114, F.S., to prohibit a board or commission from requiring a member of the public to provide an advance written copy of his or her testimony or comments as a precondition of being given the opportunity to be heard at a meeting.

Statement of Legislative Findings

Section 25 specifies that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property.

Sections 23 and 24 amend ss. 218.503 and 1002.455, F.S., respectively, to correct cross-references.

Section 26 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

Article VII, s. 18(d) of the Florida Constitution provides, in pertinent part, that laws having insignificant fiscal impact are exempt from the mandates requirements.

This bill requires county and municipal governments to establish and maintain specified internal controls, to post government budgets online, and to use the statewide travel management system. Section 25 of the bill specifies that the bill serves an important state interest. An exception may apply because the bill applies to similarly situated persons (municipalities, counties, water management districts, school districts, state agencies and other governmental entities).

In addition, the bill may be exempt from the mandates requirements if the costs incurred by the municipalities and counties to comply are less than $2 million (the threshold for "insignificant" fiscal impact).

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:

State agencies, the court system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities may incur minimal costs associated with establishing and maintaining the specified internal controls. State and local governments may incur additional costs associated with using the statewide travel management system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires municipalities and counties to establish and maintain internal controls, post budget information to websites, and use the statewide travel management system. These

requirements may mean that the constitutional mandate provisions are applicable. Section 25 attempts to address the mandates requirement by making a finding that the bill fulfills an important state interest. However, section 25 only mentions the requirements relating to establishing and maintaining the internal controls. This section should be clarified to ensure that the statement relates to all three issues relating to new responsibilities for municipalities and counties.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.40, 11.45, 28.35, 43.16, 112.061, 129.03, 129.06, 166.241, 215.86, 215.97, 215.985, 218.32, 218.33, 218.39, 218.391, 218.503, 286.0114, 373.536, 1001.42, 1002.33, 1002.37, 1002.455, 1010.01, and 1010.30.

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 25, 2017:

The committee substitute:

- Clarifies the term "meeting";
- Requires all governmental agencies to use the statewide travel management system; and
- Requires certain information to be available relating to auditor selection processes and allows the Legislative Auditing Committee to determine whether entities failing to comply with process should be subject to state action.

CS by Community Affairs on March 14, 2017:

- Adds clarification to the definition of "fraud;"
- States that local government entities do not include water management districts for the purposes of s. 11.45(2), F.S.;
- Requires the Florida Clerks of Court Operations Corporation to notify quarterly the Legislature of any clerk not meeting workload performance standards;
- Limits the amount that may be reimbursed per day for state agency and judicial branch employee lodging expenses for travel under certain circumstances to $150.
- Revises the composition of auditor selection committees;
- Requires completion of an annual financial audit of the Florida Virtual School; and
- Includes corrections for cross-references.

B. Amendments:

None.

405834

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 391 - 394

and insert:

$150 per day. For purposes of this paragraph, a meeting does not include travel activities for conducting an audit, examination, inspection, or investigation or travel activities related to a litigation or an emergency response.

(d) ~~(c)~~ No one, whether traveling out of state or in state, shall be reimbursed for any meal or lodging included in a

405834

convention or conference registration fee paid by the state.

(16) STATEWIDE TRAVEL MANAGEMENT SYSTEM.—

(a) For purposes of this subsection, "statewide travel management system" means the system acquired by the Executive Office of the Governor to:

1. Standardize and automate agency travel management;

2. Allow for travel planning and approval, expense reporting, and reimbursement; and

3. Allow a person to query travel information by public employee or officer name and position title, purpose of travel, dates and location of travel, mode of travel, confirmation of agency head or designee authorization if required, and total travel cost.

(b) All agencies and the judicial branch must report public officer and employee travel information in the statewide travel management system, including, but not limited to, officer or employee name and position title, purpose of travel, dates and location of travel, mode of travel, confirmation of agency head or designee authorization if required, and total travel cost. At a minimum, such information must be reported in the statewide travel management system on a monthly basis.

(c) All executive branch state agencies and the judicial branch must use the statewide travel management system for purposes of travel authorization and reimbursement.

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

And the directory clause is amended as follows:

Delete line 355

and insert:

405834

Statutes, is amended, and subsection (16) is added to that section, to read:

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

And the title is amended as follows:

Between lines 29 and 30

insert:

defining the term "statewide travel management system"; requiring agencies and the judicial branch to report certain travel information of public officers and employees in the statewide travel management system; requiring executive branch state agencies and the judicial branch to use the statewide travel management system for certain purposes;

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 617 and 618
insert:

(9) For each audit required by s. 218.39, the auditor shall include the following information in the management letter prepared pursuant to s. 218.39(4):

(a) The date the entity's governing body approved the selection of the auditor and the date the entity and the auditor executed the most recent contract pursuant to subsection (7);

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(b) The first fiscal year for which the auditor conducted the audit under the most recently executed contract pursuant to subsection (7); and

(c) The contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(10) On each occasion that an entity contracts with an auditor to conduct an audit pursuant to s. 218.39, an affidavit shall be executed by the chair of the entity's governing body in a format prescribed in accordance with rules adopted by the Auditor General, affirming that the auditor was selected in compliance with the requirements of subsections (3)-(6). The affidavit must accompany the entity's first audit report prepared by the auditor under the most recently executed contract pursuant to subsection (7). The affidavit shall include the following information:

(a) The date the entity's governing body approved the selection of the auditor;

(b) The first fiscal year for which the auditor conducted the audit; and

(c) The contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(11) If the entity fails to select the auditor in accordance with the requirements of subsections (3)-(6), the entity shall again perform the auditor selection process in accordance with this section to select an auditor to conduct audits for subsequent fiscal years if the original audit was performed under a multiyear contract.

(a) If performing the auditor selection process again in accordance with this section would preclude the entity from


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timely completing the annual financial audit required by s. 218.39, the entity shall again perform the auditor selection process in accordance with this section for the subsequent annual financial audit. A multiyear contract entered into between an entity and an auditor after the effective date of this act may not prohibit or restrict an entity from complying with the section.

(b) If the entity fails to perform the auditor selection process again, pursuant to this subsection, the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

(12) If the entity fails to provide the Auditor General with the affidavit required by subsection (10), the Auditor General shall request that the entity provide the affidavit. The affidavit must be provided within 45 days after the date of the request. If the entity does not comply with the Auditor General's request, the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

(13) If the entity provides the Auditor General with the affidavit required in subsection (10) but failed to select the auditor in accordance with the requirements of subsections (3)-(6), the Legislative Auditing Committee shall determine whether the entity should be subject to state action pursuant to s. 11.40(2).

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:

Delete line 589

678562

and insert:
Statutes, is amended, and subsections (9) through (13) are added to that section, to read:

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 59
and insert:
entity; requiring an auditor to include certain information in a management letter; requiring the chair of a governmental entity's governing body to submit an affidavit containing certain information when the entity contracts with an auditor to conduct an audit; providing requirements and procedures for selecting an auditor; requiring the Legislative Auditing Committee to determine whether a governmental entity should be subject to state action under certain circumstances; amending s. 286.0114, F.S.; prohibiting a

By the Committee on Community Affairs; and Senator Stargel

578-02410-17 2017880c1

A bill to be entitled

An act relating to government accountability; amending s. 11.40, F.S.; specifying that the Governor, the Commissioner of Education, or the designee of the Governor or of the commissioner may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements; amending s. 11.45, F.S.; defining the terms "abuse," "fraud," and "waste"; revising the definition of the term "local governmental entity"; excluding water management districts from certain audit requirements; removing a cross-reference; authorizing the Auditor General to conduct audits of tourist development councils and county tourism promotion agencies; revising reporting requirements applicable to the Auditor General; amending s. 28.35, F.S.; revising reporting requirements applicable to the Florida Clerks of Court Operations Corporation; amending s. 43.16, F.S.; revising the responsibilities of the Justice Administrative Commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program, to include the establishment and maintenance of certain internal controls; amending s. 112.061, F.S.; revising certain lodging rates for the purpose of reimbursement to specified employees; authorizing an employee to expend his or her funds for certain lodging expenses;

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amending ss. 129.03, 129.06, and 166.241, F.S.; requiring counties and municipalities to maintain certain budget documents on the entities' websites for a specified period; amending s. 215.86, F.S.; revising the purposes for which management systems and internal controls must be established and maintained by each state agency and the judicial branch; amending s. 215.97, F.S.; revising certain audit threshold requirements; amending s. 215.985, F.S.; revising the requirements for a monthly financial statement provided by a water management district; amending s. 218.32, F.S.; revising the requirements for the annual financial audit report of a local governmental entity; authorizing the Department of Financial Services to request additional information from a local governmental entity; requiring a local governmental entity to respond to such requests within a specified timeframe; requiring the department to notify the Legislative Auditing Committee of noncompliance; amending s. 218.33, F.S.; requiring local governmental entities to establish and maintain internal controls to achieve specified purposes; amending s. 218.39, F.S.; requiring an audited entity to respond to audit recommendations under specified circumstances; amending s. 218.391, F.S.; revising the membership of the audit committee of certain governing bodies; prohibiting an audit committee member from being an employee, a chief executive officer, or a chief financial officer of the respective governmental

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

entity; amending s. 286.0114, F.S.; prohibiting a board or commission from requiring an advance copy of testimony or comments from a member of the public as a precondition to being given the opportunity to be heard at a public meeting; amending s. 373.536, F.S.; deleting obsolete language; requiring water management districts to maintain certain budget documents on the districts' websites for a specified period; amending s. 1001.42, F.S.; authorizing additional internal audits as directed by the district school board; amending s. 1002.33, F.S.; revising the responsibilities of the governing board of a charter school to include the establishment and maintenance of internal controls; removing obsolete provisions; amending s. 1002.37, F.S.; requiring completion of an annual financial audit of the Florida Virtual School; specifying audit requirements; requiring an audit report to be submitted to the board of trustees of the Florida Virtual School and the Auditor General; deleting obsolete provisions; amending s. 1010.01, F.S.; requiring each school district, Florida College System institution, and state university to establish and maintain certain internal controls; amending s. 1010.30, F.S.; requiring a district school board, Florida College System institution board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances; amending ss. 218.503 and 1002.455, F.S.; conforming provisions and cross-references to changes made by the act;

declaring that the act fulfills an important state interest; providing an effective date.

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

Section 1. Subsection (2) of section 11.40, Florida Statutes, is amended to read:

11.40 Legislative Auditing Committee.—

(2) Following notification by the Auditor General, the Department of Financial Services, ~~or~~ the Division of Bond Finance of the State Board of Administration, the Governor or his or her designee, or the Commissioner of Education or his or her designee of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s. 11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the Legislative Auditing Committee may schedule a hearing to determine if the entity should be subject to further state action. If the committee determines that the entity should be subject to further state action, the committee shall:

(a) In the case of a local governmental entity or district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law. The committee shall specify the date that such action must ~~shall~~ begin, and the directive must be received by the Department of Revenue and the Department of Financial Services 30 days before the date of the distribution mandated by law. The Department of

Revenue and the Department of Financial Services may implement ~~the provisions of~~ this paragraph.

(b) In the case of a special district created by:

1. A special act, notify the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, the legislators who represent a portion of the geographical jurisdiction of the special district, and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0651, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

2. A local ordinance, notify the chair or equivalent of the local general-purpose government pursuant to s. 189.0652 and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0652, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

3. Any manner other than a special act or local ordinance, notify the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of

notification, the department shall proceed pursuant to s. 189.062 or s. 189.067(3).

(c) In the case of a charter school or charter technical career center, notify the appropriate sponsoring entity, which may terminate the charter pursuant to ss. 1002.33 and 1002.34.

Section 2. Subsection (1), paragraph (j) of subsection (2), paragraph (u) of subsection (3), and paragraph (i) of subsection (7) of section 11.45, Florida Statutes, are amended, and paragraph (x) is added to subsection (3) of that section, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

(a) "Abuse" means behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain.

(b) ~~(a)~~ "Audit" means a financial audit, operational audit, or performance audit.

(c) ~~(b)~~ "County agency" means a board of county commissioners or other legislative and governing body of a county, however styled, including that of a consolidated or metropolitan government, a clerk of the circuit court, a separate or ex officio clerk of the county court, a sheriff, a property appraiser, a tax collector, a supervisor of elections, or any other officer in whom any portion of the fiscal duties of a body or officer expressly stated in this paragraph ~~the above~~ are ~~under law~~ separately placed by law.

(d) ~~(c)~~ "Financial audit" means an examination of financial

statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits must ~~shall~~ encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law.

(e) "Fraud" means obtaining something of value through willful misrepresentation, including, but not limited to, the intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an organization's resources.

(f) ~~(d)~~ "Governmental entity" means a state agency, a county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function.

(g) ~~(e)~~ "Local governmental entity" means a county agency, municipality, tourist development council, county tourism promotion agency, or special district as defined in s. 189.012. The term~~, but~~ does not include any housing authority established under chapter 421.

(h) ~~(f)~~ "Management letter" means a statement of the

auditor's comments and recommendations.

(i) ~~(g)~~ "Operational audit" means an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.

(j) ~~(h)~~ "Performance audit" means an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The term includes an examination of issues related to:

1. Economy, efficiency, or effectiveness of the program.

2. Structure or design of the program to accomplish its goals and objectives.

3. Adequacy of the program to meet the needs identified by the Legislature or governing body.

4. Alternative methods of providing program services or products.

5. Goals, objectives, and performance measures used by the

agency to monitor and report program accomplishments.

6. The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies.

7. Compliance of the program with appropriate policies, rules, or laws.

8. Any other issues related to governmental entities as directed by the Legislative Auditing Committee.

(k) ~~(i)~~ "Political subdivision" means a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

(l) ~~(j)~~ "State agency" means a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

(m) "Waste" means the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

(2) DUTIES.—The Auditor General shall:

(j) Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise

required by law. No later than 18 months after the release of the audit report, the Auditor General shall perform such appropriate followup procedures as he or she deems necessary to determine the audited entity's progress in addressing the findings and recommendations contained within the Auditor General's previous report. The Auditor General shall notify each member of the audited entity's governing body and the Legislative Auditing Committee of the results of his or her determination. For purposes of this paragraph, local governmental entities do not include water management districts.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

(3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—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 as determined appropriate by the Auditor General of:

(u) The Florida Virtual School ~~pursuant to s. 1002.37~~.

(x) Tourist development councils and county tourism promotion agencies.

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(i) The Auditor General shall annually transmit by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services, a

list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and local governmental entities ~~water management districts~~ that have failed to comply with the transparency requirements as identified in the audit reports reviewed pursuant to paragraph (b) and those conducted pursuant to subsection (2).

Section 3. Paragraph (d) of subsection (2) of section 28.35, Florida Statutes, is amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the following:

(d) Developing and certifying a uniform system of workload measures and applicable workload standards for court-related functions as developed by the corporation and clerk workload performance in meeting the workload performance standards. These workload measures and workload performance standards shall be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The corporation shall develop the workload measures and workload performance standards in consultation with the Legislature. When the corporation finds a clerk has not met the workload performance standards, the corporation shall identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court. For quarterly periods ending on the last day of March, June, September, and December of each year, the corporation shall notify the Legislature of

any clerk not meeting workload performance standards and provide a copy of any corrective action plans. Such notifications shall be submitted no later than 45 days after the end of the preceding quarterly period. As used in this subsection, the term:

1. "Workload measures" means the measurement of the activities and frequency of the work required for the clerk to adequately perform the court-related duties of the office as defined by the membership of the Florida Clerks of Court Operations Corporation.

2. "Workload performance standards" means the standards developed to measure the timeliness and effectiveness of the activities that are accomplished by the clerk in the performance of the court-related duties of the office as defined by the membership of the Florida Clerks of Court Operations Corporation.

Section 4. Present subsections (6) and (7) of section 43.16, Florida Statutes, are renumbered as subsections (7) and (8), respectively, and a new subsection (6) is added to that section to read:

43.16 Justice Administrative Commission; membership, powers and duties.—

(6) The commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 5. Subsection (6) of section 112.061, Florida Statutes, is amended to read:

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.—

(6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.—For purposes of reimbursement rates and methods of calculation, per diem and subsistence allowances are provided as follows:

(a) All travelers shall be allowed for subsistence when traveling to a convention or conference or when traveling within or outside the state in order to conduct bona fide state business, which convention, conference, or business serves a direct and lawful public purpose with relation to the public agency served by the person attending such meeting or conducting such business, either of the following for each day of such travel at the option of the traveler:

1. Eighty dollars per diem; or

2. If actual expenses exceed $80, the amounts permitted in paragraph (b) for subsistence, plus actual expenses for lodging at a single-occupancy rate, except as provided in paragraph (c), to be substantiated by paid bills therefor.

When lodging or meals are provided at a state institution, the traveler shall be reimbursed only for the actual expenses of such lodging or meals, not to exceed the maximum provided for in

this subsection.

(b) All travelers shall be allowed the following amounts for subsistence while on Class C travel on official business as provided in paragraph (5)(b):

1. Breakfast $6

2. Lunch $11

3. Dinner $19

(c) Actual expenses for lodging associated with the attendance of an employee of a state agency or the judicial branch at a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch may not exceed $150 per day. However, an employee may expend his or her own funds for any lodging expenses that exceed $150 per day.

(d) ~~(c)~~ No one, whether traveling out of state or in state, shall be reimbursed for any meal or lodging included in a convention or conference registration fee paid by the state.

Section 6. Paragraph (c) of subsection (3) of section 129.03, Florida Statutes, is amended to read:

129.03 Preparation and adoption of budget.—

(3) The county budget officer, after tentatively ascertaining the proposed fiscal policies of the board for the next fiscal year, shall prepare and present to the board a tentative budget for the next fiscal year for each of the funds provided in this chapter, including all estimated receipts, taxes to be levied, and balances expected to be brought forward and all estimated expenditures, reserves, and balances to be carried over at the end of the year.

(c) The board shall hold public hearings to adopt tentative

and final budgets pursuant to s. 200.065. The hearings shall be primarily for the purpose of hearing requests and complaints from the public regarding the budgets and the proposed tax levies and for explaining the budget and any proposed or adopted amendments. The tentative budget must be posted on the county's official website at least 2 days before the public hearing to consider such budget and must remain on the website for at least 45 days. The final budget must be posted on the website within 30 days after adoption and must remain on the website for at least 2 years. The tentative budgets, adopted tentative budgets, and final budgets shall be filed in the office of the county auditor as a public record. Sufficient reference in words and figures to identify the particular transactions must ~~shall~~ be made in the minutes of the board to record its actions with reference to the budgets.

Section 7. Paragraph (f) of subsection (2) of section 129.06, Florida Statutes, is amended to read:

129.06 Execution and amendment of budget.—

(2) The board at any time within a fiscal year may amend a budget for that year, and may within the first 60 days of a fiscal year amend the budget for the prior fiscal year, as follows:

(f) Unless otherwise prohibited by law, if an amendment to a budget is required for a purpose not specifically authorized in paragraphs (a)-(e), the amendment may be authorized by resolution or ordinance of the board of county commissioners adopted following a public hearing.

1. The public hearing must be advertised at least 2 days, but not more than 5 days, before the date of the hearing. The

advertisement must appear in a newspaper of paid general circulation and must identify the name of the taxing authority, the date, place, and time of the hearing, and the purpose of the hearing. The advertisement must also identify each budgetary fund to be amended, the source of the funds, the use of the funds, and the total amount of each fund's appropriations.

2. If the board amends the budget pursuant to this paragraph, the adopted amendment must be posted on the county's official website within 5 days after adoption and must remain on the website for at least 2 years.

Section 8. Subsections (3) and (5) of section 166.241, Florida Statutes, are amended to read:

166.241 Fiscal years, budgets, and budget amendments.—

(3) The tentative budget must be posted on the municipality's official website at least 2 days before the budget hearing, held pursuant to s. 200.065 or other law, to consider such budget and must remain on the website for at least 45 days. The final adopted budget must be posted on the municipality's official website within 30 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the tentative budget and final budget to the manager or administrator of such county or counties who shall post the budgets on the county's website.

(5) If the governing body of a municipality amends the budget pursuant to paragraph (4)(c), the adopted amendment must be posted on the official website of the municipality within 5

days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the adopted amendment to the manager or administrator of such county or counties who shall post the adopted amendment on the county's website.

Section 9. Section 215.86, Florida Statutes, is amended to read:

215.86 Management systems and controls.—Each state agency and the judicial branch as defined in s. 216.011 shall establish and maintain management systems and internal controls designed to:

(1) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1). ~~that~~

(2) Promote and encourage compliance with applicable laws, rules, contracts, and grant agreements.~~;~~

(3) Support economical and ~~economic,~~ efficient~~, and effective~~ operations.~~;~~

(4) Ensure reliability of financial records and reports.~~;~~

(5) Safeguard ~~and safeguarding of~~ assets. ~~Accounting systems and procedures shall be designed to fulfill the requirements of generally accepted accounting principles.~~

Section 10. Paragraph (a) of subsection (2) of section 215.97, Florida Statutes, is amended to read:

215.97 Florida Single Audit Act.—

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

(a) "Audit threshold" means the threshold amount used to determine when a state single audit or project-specific audit of

a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $750,000 in any fiscal year of such nonstate entity shall be required to have a state single audit~~,~~ or a project-specific audit~~,~~ for such fiscal year in accordance with the requirements of this section. ~~Every 2 years the Auditor General,~~ After consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, the Auditor General shall periodically review the threshold amount for requiring audits under this section and may recommend any appropriate statutory change to revise the threshold amount in the annual report submitted pursuant to s. 11.45(7)(h) to the Legislature ~~adjust such threshold amount consistent with the purposes of this section~~.

Section 11. Subsection (11) of section 215.985, Florida Statutes, is amended to read:

215.985 Transparency in government spending.—

(11) Each water management district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district's ~~its~~ governing board and make such monthly financial statement available for public access on its website.

Section 12. Paragraph (d) of subsection (1) and subsection (2) of section 218.32, Florida Statutes, are amended to read:

218.32 Annual financial reports; local governmental entities.—

(1)

(d) Each local governmental entity that is required to

provide for an audit under s. 218.39(1) must submit a copy of the audit report and annual financial report to the department within 45 days after the completion of the audit report but no later than 9 months after the end of the fiscal year. In conducting an audit of a local governmental entity pursuant to s. 218.39, an independent certified public accountant shall determine whether the entity's annual financial report is in agreement with the audited financial statements. If the audited financial statements are not in agreement with the annual financial report, the accountant shall specify and explain the significant differences that exist between the audited financial statements and the annual financial report.

(2) The department shall annually by December 1 file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report. In preparing the verified report, the department may request additional information from the local governmental entity. The information requested must be provided to the department within 45 days after the request. If the local governmental entity does not comply with the request, the department shall notify the Legislative Auditing Committee, which may take action pursuant to s. 11.40(2). The report must include, but is not limited to:

(a) The total revenues and expenditures of each local

governmental entity that is a component unit included in the annual financial report of the reporting entity.

(b) The amount of outstanding long-term debt by each local governmental entity. For purposes of this paragraph, the term "long-term debt" means any agreement or series of agreements to pay money, which, at inception, contemplate terms of payment exceeding 1 year in duration.

Section 13. Present subsection (3) of section 218.33, Florida Statutes, is renumbered as subsection (4), and a new subsection (3) is added to that section to read:

218.33 Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures.—

(3) Each local governmental entity shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 14. Present subsections (8) through (12) of section 218.39, Florida Statutes, are renumbered as subsections (9) through (13), respectively, and a new subsection (8) is added to that section to read:

218.39 Annual financial audit reports.—

(8) If the audit report includes a recommendation that was included in the preceding financial audit report but remains unaddressed, the governing body of the audited entity, within 60

days after the delivery of the audit report to the governing body, shall indicate during a regularly scheduled public meeting whether it intends to take corrective action, the intended corrective action, and the timeframe for the corrective action. If the governing body indicates that it does not intend to take corrective action, it must explain its decision at the public meeting.

Section 15. Subsection (2) of section 218.391, Florida Statutes, is amended to read:

218.391 Auditor selection procedures.—

(2) The governing body of a ~~charter~~ county, municipality, special district, district school board, charter school, or charter technical career center shall establish an audit committee.

(a) The audit committee for a county ~~Each noncharter county shall establish an audit committee that~~, at a minimum, shall consist of each of the county officers elected pursuant to the county charter or s. 1(d), Art. VIII of the State Constitution~~,~~ or their respective designees ~~a designee,~~ and one member of the board of county commissioners or its designee.

(b) The audit committee for a municipality, special district, district school board, charter school, or charter technical career center shall consist of at least three members. One member of the audit committee must be a member of the governing body of an entity specified in this paragraph, who shall also serve as the chair of the committee.

(c) An employee, the chief executive officer, or the chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical

career center may not serve as a member of an audit committee established under this subsection.

(d) The primary purpose of the audit committee is to assist the governing body in selecting an auditor to conduct the annual financial audit required in s. 218.39; however, the audit committee may serve other audit oversight purposes as determined by the entity's governing body. The public may ~~shall~~ not be excluded from the proceedings under this section.

Section 16. Subsection (2) of section 286.0114, Florida Statutes, is amended to read:

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. A board or commission may not require a member of the public to provide an advance written copy of his or her testimony or comments as a condition of being given the opportunity to be heard at a meeting. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

Section 17. Paragraph (e) of subsection (4), paragraph (d)

of subsection (5), and paragraph (d) of subsection (6) of section 373.536, Florida Statutes, are amended to read:

373.536 District budget and hearing thereon.—

(4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

(e) ~~By September 1, 2012,~~ Each district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district's governing board and make such monthly financial statement available for public access on its website.

(5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND APPROVAL.—

(d) Each district shall, by August 1 of each year, submit for review a tentative budget and a description of any significant changes from the preliminary budget submitted to the Legislature pursuant to s. 373.535 to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of all legislative committees and subcommittees having substantive or fiscal jurisdiction over water management districts, as determined by the President of the Senate or the Speaker of the House of Representatives, as applicable, the secretary of the department, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district. The tentative budget must be posted on the district's official website at least 2 days before budget hearings held pursuant to s. 200.065 or other law and must remain on the website for at least 45 days.

(6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN; WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

(d) The final adopted budget must be posted on the water management district's official website within 30 days after adoption and must remain on the website for at least 2 years.

Section 18. Paragraph (l) of subsection (12) of section 1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(12) FINANCE.—Take steps to assure students adequate educational facilities through the financial procedure authorized in chapters 1010 and 1011 and as prescribed below:

(l) *Internal auditor.*—May employ an internal auditor to perform ongoing financial verification of the financial records of the school district and such other audits and reviews as the district school board directs for the purpose of determining:

1. The adequacy of internal controls designed to prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

2. Compliance with applicable laws, rules, contracts, grant agreements, district school board-approved policies, and best practices.

3. The efficiency of operations.

4. The reliability of financial records and reports.

5. The safeguarding of assets.

The internal auditor shall report directly to the district school board or its designee.

Section 19. Paragraph (j) of subsection (9) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(j) The governing body of the charter school shall be responsible for:

1. Establishing and maintaining internal controls designed to:

a. Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

b. Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

c. Support economical and efficient operations.

d. Ensure reliability of financial records and reports.

e. Safeguard assets.

2.~~1.~~ Ensuring that the charter school has retained the services of a certified public accountant or auditor for the annual financial audit, pursuant to s. 1002.345(2), who shall submit the report to the governing body.

3.~~2.~~ Reviewing and approving the audit report, including audit findings and recommendations for the financial recovery plan.

4.a.~~3.a.~~ Performing the duties in s. 1002.345, including monitoring a corrective action plan.

b. Monitoring a financial recovery plan in order to ensure compliance.

5.~~4.~~ Participating in governance training approved by the department which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.

Section 20. Present subsections (6) through (10) of section 1002.37, Florida Statutes, are renumbered as subsections (7) through (11), respectively, a new subsection (6) is added to

that section, and present subsections (6) and (11) of that section are amended, to read:

1002.37 The Florida Virtual School.—

(6) The Florida Virtual School shall have an annual financial audit of its accounts and records conducted by an independent auditor who is a certified public accountant licensed under chapter 473. The independent auditor shall conduct the audit in accordance with rules adopted by the Auditor General pursuant to s. 11.45 and, upon completion of the audit, shall prepare an audit report in accordance with such rules. The audit report must include a written statement by the board of trustees describing corrective action to be taken in response to each of the recommendations of the independent auditor included in the audit report. The independent auditor shall submit the audit report to the board of trustees and the Auditor General no later than 9 months after the end of the preceding fiscal year.

(7)~~(6)~~ The board of trustees shall annually submit to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education the audit report prepared pursuant to subsection (6) and a complete and detailed report setting forth:

(a) The operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global.

(b) The marketing and operational plan for the Florida Virtual School and Florida Virtual School Global, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning

technology.

(c) The assets and liabilities of the Florida Virtual School and Florida Virtual School Global at the end of the fiscal year.

~~(d) A copy of an annual financial audit of the accounts and records of the Florida Virtual School and Florida Virtual School Global, conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General.~~

(d) ~~(c)~~ Recommendations regarding the unit cost of providing services to students through the Florida Virtual School and Florida Virtual School Global. In order to most effectively develop public policy regarding any future funding of the Florida Virtual School, it is imperative that the cost of the program is accurately identified. The identified cost of the program must be based on reliable data.

(e) ~~(f)~~ Recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by the Florida Virtual School and Florida Virtual School Global.

~~(11) The Auditor General shall conduct an operational audit of the Florida Virtual School, including Florida Virtual School Global. The scope of the audit shall include, but not be limited to, the administration of responsibilities relating to personnel; procurement and contracting; revenue production; school funds, including internal funds; student enrollment records; franchise agreements; information technology utilization, assets, and security; performance measures and standards; and accountability. The final report on the audit shall be submitted to the President of the Senate and the~~

~~Speaker of the House of Representatives no later than January 31, 2014.~~

Section 21. Subsection (5) is added to section 1010.01, Florida Statutes, to read:

1010.01 Uniform records and accounts.—

(5) Each school district, Florida College System institution, and state university shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.

Section 22. Subsection (2) of section 1010.30, Florida Statutes, is amended to read:

1010.30 Audits required.—

(2) If a school district, Florida College System institution, or university audit report includes a recommendation that was included in the preceding financial audit report but remains unaddressed ~~an audit contains a significant finding~~, the district school board, the Florida College System institution board of trustees, or the university board of trustees, within 60 days after the delivery of the audit report to the school district, Florida College System institution, or university, shall indicate ~~conduct an audit overview~~ during a regularly scheduled public meeting whether it intends to take corrective action, the intended corrective

action, and the timeframe for the corrective action. If the district school board, Florida College System institution board of trustees, or university board of trustees indicates that it does not intend to take corrective action, it shall explain its decision at the public meeting.

Section 23. Subsection (3) of section 218.503, Florida Statutes, is amended to read:

218.503 Determination of financial emergency.—

(3) Upon notification that one or more of the conditions in subsection (1) have occurred or will occur if action is not taken to assist the local governmental entity or district school board, the Governor or his or her designee shall contact the local governmental entity or the Commissioner of Education or his or her designee shall contact the district school board, as appropriate, to determine what actions have been taken by the local governmental entity or the district school board to resolve or prevent the condition. The information requested must be provided within 45 days after the date of the request. If the local governmental entity or the district school board does not comply with the request, the Governor or his or her designee or the Commissioner of Education or his or her designee shall notify ~~the members of~~ the Legislative Auditing Committee, which ~~who~~ may take action pursuant to s. 11.40(2) ~~11.40~~. The Governor or the Commissioner of Education, as appropriate, shall determine whether the local governmental entity or the district school board needs state assistance to resolve or prevent the condition. If state assistance is needed, the local governmental entity or district school board is considered to be in a state of financial emergency. The Governor or the Commissioner of

Education, as appropriate, has the authority to implement measures as set forth in ss. 218.50-218.504 to assist the local governmental entity or district school board in resolving the financial emergency. Such measures may include, but are not limited to:

(a) Requiring approval of the local governmental entity's budget by the Governor or approval of the district school board's budget by the Commissioner of Education.

(b) Authorizing a state loan to a local governmental entity and providing for repayment of same.

(c) Prohibiting a local governmental entity or district school board from issuing bonds, notes, certificates of indebtedness, or any other form of debt until such time as it is no longer subject to this section.

(d) Making such inspections and reviews of records, information, reports, and assets of the local governmental entity or district school board as are needed. The appropriate local officials shall cooperate in such inspections and reviews.

(e) Consulting with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements.

(f) Providing technical assistance to the local governmental entity or the district school board.

(g)1. Establishing a financial emergency board to oversee the activities of the local governmental entity or the district school board. If a financial emergency board is established for a local governmental entity, the Governor shall appoint board

members and select a chair. If a financial emergency board is established for a district school board, the State Board of Education shall appoint board members and select a chair. The financial emergency board shall adopt such rules as are necessary for conducting board business. The board may:

a. Make such reviews of records, reports, and assets of the local governmental entity or the district school board as are needed.

b. Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or the district school board into compliance with state requirements.

c. Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board.

d. Consult with other governmental entities for the consolidation of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

2. The recommendations and reports made by the financial emergency board must be submitted to the Governor for local governmental entities or to the Commissioner of Education and the State Board of Education for district school boards for appropriate action.

(h) Requiring and approving a plan, to be prepared by officials of the local governmental entity or the district school board in consultation with the appropriate state officials, prescribing actions that will cause the local governmental entity or district school board to no longer be subject to this section. The plan must include, but need not be limited to:

1. Provision for payment in full of obligations outlined in subsection (1), designated as priority items, which are currently due or will come due.

2. Establishment of priority budgeting or zero-based budgeting in order to eliminate items that are not affordable.

3. The prohibition of a level of operations which can be sustained only with nonrecurring revenues.

4. Provisions implementing the consolidation, sourcing, or discontinuance of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

Section 24. Subsection (2) of section 1002.455, Florida Statutes, is amended to read:

1002.455 Student eligibility for K-12 virtual instruction.—

(2) A student is eligible to participate in virtual instruction if:

(a) The student spent the prior school year in attendance at a public school in the state and was enrolled and reported by the school district for funding during October and February for

purposes of the Florida Education Finance Program surveys;

(b) The student is a dependent child of a member of the United States Armed Forces who was transferred within the last 12 months to this state from another state or from a foreign country pursuant to a permanent change of station order;

(c) The student was enrolled during the prior school year in a virtual instruction program under s. 1002.45 or a full-time Florida Virtual School program under s. 1002.37(9)(a) ~~1002.37(8)(a)~~;

(d) The student has a sibling who is currently enrolled in a virtual instruction program and the sibling was enrolled in that program at the end of the prior school year;

(e) The student is eligible to enter kindergarten or first grade; or

(f) The student is eligible to enter grades 2 through 5 and is enrolled full-time in a school district virtual instruction program, virtual charter school, or the Florida Virtual School.

Section 25. The Legislature finds that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 26. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR KELLI STARGEL
22nd District

March 16, 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 SB 880, related to *Government Accountability*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

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

Tallahassee, Florida 32399-1100

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

SENATOR KELLI STARGEL
22nd District

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,

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

4-25-17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 880

Meeting Date *Bill Number (if applicable)*

Topic Government Accountability *Amendment Barcode (if applicable)*

Name Andrew Hosek

Job Title Policy Analyst

Address 200 W College Ave Phone

Street

Tallahassee FL Email ahosek@afphq.org

City *State* *Zip*

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

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 928
INTRODUCER:	Environmental Preservation and Conservation Committee and Senators Stargel and Mayfield
SUBJECT:	Water Protection and Sustainability
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	**Fav/CS**
2.	Reagan	Betta	AEN	**Recommend: Favorable**
3.	Reagan	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 928 creates the "Heartland Headwaters Protection and Sustainability Act." The bill contains legislative findings and intent regarding the significance of, and protections for, water resources in the Green Swamp Area of central Florida.

The bill requires the Polk County Regional Water Cooperative (PRWC), in coordination with all of its member county and municipal governments, to prepare a comprehensive annual report on water resource projects identified for priority state funding within its members' jurisdictions. The report must include lists of projects, identified by the PRWC for priority state funding, ranked in several categories, and the source and amount of financial assistance to be provided by the PRWC, the member county or municipal governments, or other entity for each listed project. The bill requires the PRWC to submit its annual report beginning December 1, 2017 to the Governor, the Legislature, the Department of Environmental Protection (DEP), and appropriate water management districts (WMDs). The bill also requires the PRWC to coordinate with appropriate WMDs on the inclusion in consolidated WMD annual reports of a status report on projects receiving priority state funding.

Finally, the bill clarifies the spending of a discretionary local government infrastructure surtax by authorizing a county or municipality that receives tax proceeds to transfer some part or all of the tax proceeds to a regional water supply authority whose purpose is to develop, recover, store, and supply water.

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

II. Present Situation:

The Floridan Aquifer

The Floridan Aquifer is one of the most productive aquifers in the world, underlying approximately 100,000 square miles in southern Alabama, southeastern Georgia, southern South Carolina, and all of Florida. It is a multiple-use aquifer system. Where it contains freshwater, it is the principal source of water supply for several large cities (e.g., Savannah and Brunswick in Georgia; Jacksonville, Tallahassee, Orlando, and St. Petersburg in Florida) and for hundreds of thousands in smaller communities and rural areas.[1]

Regional Water Supply Planning

In 1998, each of Florida's five water management districts (WMDs) prepared water supply assessments to determine the existing and future water needs of the state. The WMDs evaluated the adequacy of existing and potential sources to meet reasonable-beneficial needs and sustain natural systems for the following 20-year period. At that time, four of the five WMDs determined that sources were inadequate to meet future needs while sustaining the natural resources and were required to prepare a regional water supply plan (RWSP).[2]

By the end of 2015, the South Florida WMD, the St. Johns River WMD, and the Southwest Florida WMD had developed RWSPs for all regions within their districts and were working on their next 5-year updates. The Northwest Florida WMD currently has two RWSPs. Additionally, in areas where ground water basins (GWBs) are shared between WMDs, inter-district water supply planning efforts are developed, such as the Central Florida Water Initiative (CFWI) and the North Florida Regional Water supply Partnership involving the Suwannee River WMD and the St. Johns River WMD.[3]

Regional water supply planning must be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities,[4] government-owned and privately owned water and wastewater utilities, multijurisdictional water supply entities, self-suppliers, reuse utilities, the Department of Environmental Protection (DEP), the Department of Agriculture and Consumer Services (DACS), and other affected and interested parties.[5] It is based on a 20 year planning period and includes a water supply development component (e.g., further development of fresh ground water and surface water, demineralization of brackish ground water, desalination of seawater, reuse of reclaimed water, water conservation) and a water resource development component (e.g., increasing water storage capabilities through

[1] USGS. *Floridan Aquifer System*, https://pubs.usgs.gov/ha/ha730/ch_g/G-text6.html (last visited Mar. 22, 2017).
[2] Section 373.709(1), F.S.; DEP, *Regional Water Supply Planning*, http://www.dep.state.fl.us/water/waterpolicy/rwsp.htm (last visited Mar. 22, 2017).
[3] DEP, *Regional Water Supply Planning Fact Sheet*, http://www.dep.state.fl.us/water/waterpolicy/docs/factsheets/wrfss-regional-water-supply-planning.pdf (last visited Mar. 22, 2017).
[4] A regional water supply authority is created pursuant to s. 373.713, F.S.; It can be an "agency" under ch. 120, F.S.; *see* s. 120.52(1), F.S.; A "governmental authority" under ch. 367, F.S.; *see* s. 367.021(7), F.S.
[5] Section 373.709(1), F.S.; s. 373.036(2), F.S.

surface reservoirs, aquifer storage and recovery) that could meet the projected reasonable-beneficial needs.[6]

Heartland Water Supply Planning Region

The Heartland water supply planning region covers approximately 2,569 square miles and includes Hardee County and the portions of Polk and Highlands counties within the Southwest Florida WMD.[7] The remaining portions of Polk and Highlands counties are within the South Florida WMD and are in separate water supply planning regions, the Upper Kissimmee and Lower Kissimmee, respectively.[8]

The Central Florida Water Initiative

The Central Florida Water Initiative (CFWI) is a collaborative process involving the DEP, the St. Johns River WMD, the South Florida WMD, the Southwest Florida WMD, DACS, regional public water supply utilities, and other stakeholders to address the current and long-term water supply needs of central Florida without causing harm to the water resources and associated natural systems.[9] The CFWI area includes all of Orange, Osceola, Polk, and Seminole counties, and southern Lake County.[10] The area covers approximately 5,300 square miles and encompasses:

- The headwaters for seven river systems:
  - The Alafia, located in Polk County;[11]
  - The Hillsborough, located in the Green Swamp in southeast Pasco County;[12]
  - The Kissimmee;
  - The Ocklawaha, located in the Green Swamp near Lake Apopka, in Orange County;[13]
  - The Peace, located in the Green Swamp in northern Polk County;[14]
  - The St. Johns, located in Indian River and Brevard counties;[15]
  - The Withlacoochee, located in the Green Swamp in northwestern Polk and southern Sumter counties.[16]

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[6] Section 373.709(2), F.S.; DEP, *Regional Water Supply Planning*, http://www.dep.state.fl.us/water/waterpolicy/rwsp.htm (last visited Mar. 22, 2017).
[7] Southwest Florida WMD. *Regional Water Supply Plan*, https://www.swfwmd.state.fl.us/documents/plans/RWSP/heartland.php (last visited Mar. 20, 2017).
[8] Southwest Florida WMD. *Florida's Water Management Districts*, http://www.swfwmd.state.fl.us/about/wmds.php (last visited Mar. 22, 2017).
[9] Section 373.0465(1)(c), F.S.; CFWI. *Central Florida Water Initiative Guiding Document* (January 2015), http://cfwiwater.com/pdfs/CFWI_Guiding_Document_2015-01-30.pdf (last visited Mar. 22, 2017).
[10] Section 373.0465(2)(a), F.S.; CFWI. *Central Florida Water Initiative Guiding Document* (January 2015), http://cfwiwater.com/pdfs/CFWI_Guiding_Document_2015-01-30.pdf (last visited Mar. 21, 2017).
[11] *See infra* n. 48 and accompanying text.
[12] Southwest Florida WMD. *Green Swamp Interactive*, https://www.swfwmd.state.fl.us/education/interactive/greenswamp/rivers.html (last visited Mar. 20, 2017).
[13] *Id.*
[14] Southwest Florida WMD. *The Peace River*, http://www.swfwmd.state.fl.us/education/interactive/peaceriver/natural.php; Southwest Florida WMD. *Green Swamp Interactive*, https://www.swfwmd.state.fl.us/education/interactive/greenswamp/rivers.html (last visited Mar. 22, 2017).
[15] St. Johns River WMD. *Upper St. Johns River Basin*, http://www.sjrwmd.com/upperstjohnsriver/ (last visited Mar. 21, 2017).
[16] Southwest Florida WMD. *Green Swamp Interactive*, https://www.swfwmd.state.fl.us/education/interactive/greenswamp/rivers.html (last visited Mar. 20, 2017).

- Four distinct ground water basins (GWBs). These GWBs meet in north-central Polk County, and in general this location represents an important area of recharge with ground water flow radiating out in all directions.[17]
- Approximately 1,200 square miles or 782,000 acres of wetlands.
- Approximately 475 square miles or 300,300 acres of open water bodies.
- Seven regional wetlands systems: the Green Swamp, Reedy Creek Swamp, Davenport Creek Swamp, Big Bend Swamp, Cat Island Swamp, Boggy Creek Swamp, and Shingle Creek Swamp.
- Sixteen first, second, and third magnitude springs.[18]

Areas that appear to be more susceptible to the effects of ground water withdrawals include the Wekiva Springs/River System, western Seminole County and western Orange County, southern Lake County, the Lake Wales Ridge, and the Southern Water Use Caution Area (SWUCA) in Polk County. The Southwest Florida WMD has already adopted rules for the SWUCA that are as restrictive, if not more restrictive, than those in the CFWI. Since portions of Polk County are in both areas, only the portion of Polk County that is outside the SWUCA is subject to the CFWI rules.[19]

The Southern Water Use Caution Area

The SWUCA was established in 1992, by the Southwest Florida WMD, in response to growing water demands from public supply, agriculture, mining, power generation and recreational uses and environmental concerns related to these ground water withdrawals.[20] It is an area of approximately 5,100 square miles in the Southern West-Central GWB that includes all of Desoto, Hardee, Manatee, and Sarasota counties and parts of Charlotte, Highlands, Hillsborough, and Polk counties.[21]

In 2006, the Southwest Florida WMD adopted the SWUCA Recovery Strategy[22] that has four main goals:

- Achieve minimum flows in the upper Peace River;
- Achieve minimum lake levels in lakes along the Lake Wales Ridge, which extends roughly 90 miles along the center of the state in Polk and Highlands counties;
- Achieve the saltwater intrusion minimum aquifer level; and

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[17] CFWI. *Central Florida Water Initiative Guiding Document* (January 2015), http://cfwiwater.com/pdfs/CFWI_Guiding_Document_2015-01-30.pdf (last visited Mar. 22, 2017).
[18] CFWI. *Central Florida Water Initiative Regional Water Supply Plan Public Draft*, http://cfwiwater.com/pdfs/plans/CFWI_RWSP_DrftPblc2_VolIa_5-1-15.pdf (last visited Mar. 22, 2017).
[19] *Id*.
[20] Section 373.0363(2)(a), F.S.; Southwest Florida WMD. *Southern Water Use Caution Area*, https://www.swfwmd.state.fl.us/projects/swuca/ (last visited Mar. 22, 2017); Southwest Florida WMD. *Southern Water Use Caution Area Recovery Strategy* (March 2006), https://www.swfwmd.state.fl.us/documents/plans/swuca_recovery_strategy.pdf (last visited Mar. 21, 2017).
[21] Section 373.0363(1)(c), F.S.; SWFWMD. *Southern Water Use Caution Area Recovery Strategy* (March 2006), https://www.swfwmd.state.fl.us/documents/plans/swuca_recovery_strategy.pdf (last visited Mar. 20, 2017).
[22] The "Southern Water Use Caution Area Recovery Strategy" is the district's planning, regulatory, and financial strategy for ensuring that adequate water supplies are available to meet growing demands while protecting and restoring the water and related natural resources of the area; s. 373.0363(1)(d), F.S.

- Ensure water supply needs are met for existing and projected reasonable and beneficial uses.[23]

Ground water withdrawals have since stabilized in the SWUCA. Water supply needs for the region are being met through the planning period as a result of regional water supply planning and management efforts. However, depressed aquifer levels continue to cause saltwater intrusion into the Floridan Aquifer and contribute to reduced flows in the upper Peace River and lowered lake levels of some of the lakes in the upland areas of Polk and Highlands counties.[24] The Southwest Florida WMD has formed two separate stakeholder workgroups to assist in identifying additional options for achieving these goals.[25]

Consolidated Water Management District Annual Report

Each year, each WMD must prepare and submit to the DEP, the Governor, the President of the Senate, and the Speaker of the House of Representatives a consolidated WMD annual report on the management of water resources. Also, they must provide copies to all legislative committee chairs having substantive or fiscal jurisdiction over the WMDs and the governing board of each county in the WMD having jurisdiction or deriving any funds for operations of the WMD. Copies must also be available to the public, either in printed or electronic format.[26]

Among other requirements, the report must contain information on all projects related to water quality or water quantity as part of a five-year work program, including:

- A list of all specific projects identified to implement a basin management action plan or a recovery or prevention strategy;
- A priority ranking for each listed project for which state funding through the water resources development work program is requested, which must be made available to the public for comment at least 30 days before submission of the consolidated annual report;
- The estimated cost for each listed project;
- The estimated completion date for each listed project;
- The source and amount of financial assistance to be made available by the DEP, a WMD, or other entity for each listed project; and
- A quantitative estimate of each listed project's benefit to the watershed, water body, or water segment in which it is located.[27]

[23] Southwest Florida WMD. *Southern Water Use Caution Area*, https://www.swfwmd.state.fl.us/projects/swuca/ (last visited Mar. 22, 2017).
[24] Section 373.0363(2)(b), F.S.; Southwest Florida WMD. *Southern Water Use Caution Area Recovery Strategy* (March 2006), https://www.swfwmd.state.fl.us/documents/plans/swuca_recovery_strategy.pdf (last visited Mar. 22, 2017); CFWI. *Central Florida Water Initiative Regional Water Supply Plan Public Draft*, http://cfwiwater.com/pdfs/plans/CFWI_RWSP_DrftPblc2_VolIa_5-1-15.pdf (last visited Mar. 21, 2017).
[25] Southwest Florida WMD. *Southern Water Use Caution Area*, https://www.swfwmd.state.fl.us/projects/swuca/ (last visited Mar. 22, 2017).
[26] Section 373.036(7)(a), F.S.
[27] Section 373.036(7)(b)8.a.-f., F.S.

Regional Water Supply Authorities

Counties, municipalities, or special districts may enter into interlocal agreements to create a regional water supply authority (RWSA) for the purpose of developing, recovering, storing, and supplying water for county or municipal purposes that will give priority to reducing adverse environmental effects of excessive or improper withdrawals of water from concentrated areas. These agreements must be approved by the Secretary of the DEP to ensure that the agreement will be in the public interest and complies with the intent and purposes of the Florida Interlocal Cooperation Act.[28]

In approving such an agreement, the Secretary of the DEP must consider, but is not limited to, the following:

- Whether the geographic territory of the proposed authority is of sufficient size and character to reduce the environmental effects of improper or excessive withdrawals of water from concentrated areas.
- The maximization of economic development of the water resources within the territory of the proposed authority.
- The availability of a dependable and adequate water supply.
- The ability of any proposed authority to design, construct, operate, and maintain water supply facilities, in the locations and at the times necessary to ensure that an adequate water supply will be available within the authority.
- The effect or impact of any proposed authority on any municipality, county, or existing authority or authorities.[29]

Currently, there are four RWSAs: Tampa Bay Water (formerly known as the West Coast RWSA), Peace River/Manasota RWSA, Withlacoochee RWSA, and Walton/Okaloosa/Santa Rosa Regional Utility Authority.[30]

Polk County Regional Water Cooperative

In June 2016, Polk County and 16 municipalities within Polk County[31] entered into an interlocal agreement to create a RWSA known as the Polk County Regional Water Cooperative (PRWC).[32] The role of the PRWC is to proactively identify alternative water resources and projects that ensure the future sustainability of the regional water supply. The PRWC will specifically identify sustainable ground water sources, develop strategies that meet water demands, determine needed infrastructure, and establish consistent rules.[33]

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[28] Sections 373.713(1), F.S., and 163.01, F.S.
[29] Section 373.713(1)(a)-(f), F.S.
[30] DEO. *Water Supply Planning*, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/water-supply-planning (last visited Mar. 22, 2017).
[31] The City of Auburndale; City of Bartow; City of Davenport; Town of Dundee; City of Eagle Lake; City of Fort Meade; City of Frostproof; Haines City; City of Lake Alfred; Town of Lake Hampton; City of Lakeland; City of Lake Wales; City of Mulberry; Polk City; and City of Winter Haven; Polk County Regional Water Cooperative. *Members*, http://www.prwcwater.org/Members.aspx (last visited Mar. 20, 2017).
[32] Polk County Regional Water Cooperative. *Interlocal Agreement Relating to the Establishment of the Polk County Regional Water Cooperative*, http://www.prwcwater.org/boccsite/WorkArea/DownloadAsset.aspx?id=11306 (last visited Mar. 22, 2017).
[33] Polk County Regional Water Cooperative. *Homepage* http://www.prwcwater.org/ (last visited Mar. 21, 2017).

The Green Swamp

The Green Swamp includes portions of Polk, Lake, Sumter, Hernando and Pasco counties. The region consists of 560,000 acres of wetlands, flatlands and low ridges bound by prominent sandy ridgelines that form the headwaters of the Withlacoochee,[34] the Ocklawaha,[35] the Hillsborough[36] and the Peace Rivers.[37] The Peace and Hillsborough Rivers are potable water sources for Tampa and Sarasota. The Ocklawaha, Withlacoochee and Hillsborough Rivers are designated Outstanding Florida Waters.[38]

The Green Swamp is elevated above outlying areas and the Floridan Aquifer rises very close to the land surface, which causes the region to function as the pressure head for the aquifer, helping maintain free-flowing springs, rivers, and abundant high quality drinking water. Accordingly, protecting the Green Swamp is vital to protecting the quality and quantity of Florida's water supply. In recognizing the statewide significance of this area's valuable hydrologic functions, second only to that of the Everglades, and the need to specifically regulate encroaching development that would imperil these functions, the state in 1979, designated 322,690 acres of the Green Swamp as an area of critical state concern.[39] The designated area is located in northern Polk and southern Lake counties.[40]

Areas of Critical State Concern

The Governor and Cabinet, sitting as the Administration Commission,[41] are authorized to designate certain areas within the state that contain resources of statewide significance as areas of critical state concern.[42] An area of critical state concern may only be designated for an area:

- Containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters,[43] and aquifer recharge areas, where uncontrolled development would cause substantial deterioration of such resources;

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[34] *See supra* n. 17 and accompanying text.
[35] *See supra* n. 14 and accompanying text.
[36] *See supra* n. 13 and accompanying text.
[37] *See supra* n. 15 and accompanying text.
[38] DEO. *Green Swamp Area*, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/the-green-swamp (last visited Mar. 22, 2017); "Outstanding Florida Waters" are waters designated by the Environmental Regulation Commission as being worthy of special protection because of their natural attributes; r. 62-302.200(26), F.A.C.
[39] Section 380.0551, F.S.; Southwest Florida WMD. *Green Swamp Wilderness Preserve*, http://www.swfwmd.state.fl.us/recreation/areas/greenswamp.html (last visited Mar. 22, 2017); DEO. *Green Swamp Area*, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/the-green-swamp (last visited Mar. 21, 2017); Southwest Florida WMD *Green Swamp Interactive*, https://www.swfwmd.state.fl.us/education/interactive/greenswamp/textonly.html (last visited Mar. 22, 2017).
[40] DEO. *Green Swamp Area*, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/the-green-swamp (last visited Mar. 20, 2017).
[41] *See* ss. 380.031(1) and 14.202, F.S.
[42] Section 380.05, F.S.
[43] "Outstanding Florida Waters" means waters designated by the Environmental Regulation Commission as worthy of special protection because of their natural attributes; r. 62-302.200(26), F.A.C.

- Containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, where development would cause substantial deterioration or complete loss of such resources, sites, or districts; or
- Having a significant impact upon, or being significantly impacted by, an existing or proposed major public facility or other area of major public investment including, highways, ports, airports, energy facilities, and water management projects.[44]

In addition to the Green Swamp Area, the Big Cypress Area,[45] the Florida Keys Area, the City of Key West Area,[46] and the Apalachicola Bay Area[47]are areas of critical state concern.

The Alafia River

The Alafia River consists of two major branches, the North Prong and the South Prong, which originate in western Polk County and converge in eastern Hillsborough County to form the river.[48] The Alafia River now contributes the largest outflow of any river to Tampa Bay. The Hillsborough River was Tampa Bay's biggest freshwater contributor, but a prolonged drought, coupled with Tampa's water needs, has placed heavy demands on the Hillsborough River and its watershed.[49]

The Kissimmee River

The Kissimmee River Basin covers approximately 2,940 square miles in Central Florida. The watershed is approximately 105 miles long, extending from Orlando southward to Lake Okeechobee, encompassing Orange, Osceola, Okeechobee, Highlands, and Polk Counties and a small portion of Lake County.[50] The basin is made up of more than two dozen lakes in the Kissimmee Chain of Lakes, their tributary streams and associated marshes and the Kissimmee River and floodplain, forming the headwaters of Lake Okeechobee and the Everglades.[51]

Historically, the Kissimmee Chain of Lakes and the Kissimmee River were an integrated system of headwater lakes connected by broad shallow wetlands and creeks. These systems were substantially altered by the construction of the Central and South Florida Flood Control Project in the 1960s. The river, which once meandered for 103 miles throughout Central Florida, with its floodplain reaching up to three miles wide, was reconfigured into a 56 mile long canal for flood control. Restoration efforts are underway for portions of the Kissimmee River.[52]

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[44] Section 380.05(2)(a)-(c), F.S.
[45] Section 380.055, F.S.
[46] Section 380.0552, F.S.
[47] Section 380.0555, F.S.
[48] USGS. Gerold Morrison and Holly Greening, *Freshwater Flows* ch. 6, p. 169, https://pubs.usgs.gov/circ/1348/pdf/ (Jan. 2012) (last visited Mar. 20, 2017).
[49] Southwest Florida WMD. *Alafia River Watershed Excursion*, http://www.swfwmd.state.fl.us/education/watersheds/alafia/geology (last visited Mar. 21, 2017).
[50] DEP, *Kissimmee River Basin Lakes, Rivers, Streams, and Aquifers*, https://www.dep.state.fl.us/water/monitoring/docs/bmr/kissimmee.pdf (last visited Mar. 20, 2017).
[51] South Florida WMD. *Kissimmee River*, https://www.sfwmd.gov/our-work/kissimmee-river (last visited Mar. 22, 2017).
[52] *Id.*

Local Government Infrastructure Surtax

A county may levy a discretionary sales surtax of 0.5 percent or one percent pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax. If municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax must be placed on the ballot and will take effect if approved by a majority of the electors of the county voting in the referendum on the surtax. [53] Surtax proceeds and any accrued interest must be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county.[54]

III. Effect of Proposed Changes:

The bill creates the "Heartland Headwaters Protection and Sustainability Act."

Section 2 creates s. 373.462, F.S., containing legislative findings and intent regarding the significance of, and protections for, water resources in the Green Swamp Area of central Florida, and providing legislative recognition of the following:

- By law in 1979, portions of Lake and Polk Counties were designated as the Green Swamp Area of Critical State Concern in acknowledgment of the regional and statewide importance of the area in maintaining the quality and quantity of Florida's water supply and water resources for the public and the environment; and
- The Southern Water Use Caution Area (SWUCA) Recovery Strategy dated March of 2006, and the Central Florida Water Initiative (CFWI) Guiding Document dated January 30, 2015, both recognized the fact that the surface water and ground water resources in the heartland counties of Hardee, Highlands, and Polk are integral to the health, public safety, and economic future of the Green Swamp Area and surrounding regions.

The section makes specific legislative findings that:

- The Green Swamp Area and the surrounding region are economically, environmentally, and socially defined by some of the most important and vulnerable water resources in the state;
- The Green Swamp Area, which encompasses approximately 560,000 acres, is located in a regionally significant high recharge area of the Floridan Aquifer system and helps protect coastal communities from saltwater intrusion;
- The Green Swamp Area's unique topography and geology receives no water inputs other than rainfall. The area is essential in maintaining the potentiometric head of the Floridan Aquifer system that directly influences the aquifer's productivity for water supply; and
- The headwaters of six major river systems are located in the Green Swamp Area or in Polk County.

The section makes additional legislative declarations that:

- There is an important state interest in partnering with regional water supply authorities (RWSA), local governments, and water management districts to protect the water resources

[53] Section 212.055(2)(a)1., F.S.
[54] Section 212.055(2)(d), F.S.

of the headwaters of the Alafia, Hillsborough, Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers and surrounding areas; and
- Priority state funding consideration must be given to solutions to manage the water resources of these headwaters and the local Floridan Aquifer system in the most efficient, cost-effective, and environmentally beneficial way.

Section 3 creates s. 373.463, F.S., to require the Polk County Regional Water Cooperative (PRWC), in coordination with all of its member county and municipal governments, to prepare a comprehensive annual report on water resource projects identified for priority state funding within its members' jurisdictions. The report must include, at a minimum:
- Lists of projects, identified by the PRWC for priority state funding, in each of the following categories, which may list the same project in more than one category:
  - Drinking water supply;
  - Wastewater, including reuse;
  - Stormwater and flood control;
  - Environmental restoration; and
  - Conservation;
- A priority ranking within each category for each listed project that will be ready for implementation in the upcoming fiscal year;
- The estimated cost of each listed project;
- The estimated completion date of each listed project; and
- The source and amount of financial assistance to be provided by the PRWC, the member county or municipal governments, or other entity for each listed project.

This section requires the PRWC to submit its annual report beginning December 1, 2017, to the Governor, the Legislature, the Department of Environmental Protection (DEP), and appropriate water management districts. The PRWC is required to coordinate with appropriate water management districts on the inclusion in consolidated water management district annual reports of a status report on projects receiving priority state funding.

Finally, section 4 amends s. 212.055, F.S., to authorize a city or county to transfer the revenues generated by the local government infrastructure surtax to a regional water supply authority to develop, recover, store, and supply water consistent with the purposes specified in s. 212.055(2)(d), F.S.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable.

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:

This bill does not impact state or local government revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 373.462 and 373.463.

This bill substantially amends section 212.055 of the Florida Statutes.

IX. Additional Information:

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

CS by Environmental Preservation and Conservation on March 28, 2017:

- Removes an exemption from the bill so that the Secretary of the Department of Environmental Protection must, under s. 373.713(1), F.S., approve the Polk County Regional Water Cooperative (PRWC).
- Adds reuse to the wastewater category of projects listed for priority state funding in the annual report by the PRWC.
- Requires the PRWC to submit its annual report beginning December 1, 2017, to the Governor, the Legislature, the DEP, and appropriate water management districts.
- Requires the PRWC to coordinate with appropriate water management districts on the inclusion in consolidated water management district annual reports of a status report on projects receiving priority state funding.

- Clarifies spending of a local government infrastructure surtax by authorizing a county or municipality that receives tax proceeds to transfer some part or all of the tax proceeds to a regional water supply authority whose purpose is to develop, recover, store, and supply water.
- Removes an annual appropriation, beginning in the 2017-2018 fiscal year and ending in the 2036-2037 fiscal year, for an unspecified amount of funds to the DEP for projects identified for priority state funding in the PRWC annual report.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation; and Senator Stargel

592-03009-17 2017928c1

A bill to be entitled

An act relating to water protection and sustainability; creating the "Heartland Headwaters Protection and Sustainability Act"; creating s. 373.462, F.S.; providing legislative findings and a declaration of important state interest; creating s. 373.463, F.S.; requiring the Polk Regional Water Cooperative, in coordination with its member county and municipal governments, to prepare a comprehensive annual report on certain water resource projects within its members' jurisdictions; specifying requirements for such report; specifying to whom such report must be submitted; requiring the Polk Regional Water Cooperative, in coordination with appropriate water management districts, to submit an annual status report on projects receiving priority state funding; requiring that such report be included in specified annual reports; amending s. 212.055, F.S.; authorizing local government infrastructure surtax proceeds to be allocated to regional water supply authorities under certain conditions; providing an effective date.

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

Section 1. This act may be cited as the "Heartland Headwaters Protection and Sustainability Act."

Section 2. Section 373.462, Florida Statutes, is created to read:

373.462 Legislative findings and intent.—

592-03009-17 2017928c1

(1) The Legislature recognizes that, in 1979, specified portions of Lake and Polk Counties were designated by law as an area of critical state concern, known as the Green Swamp Area, in acknowledgment of their regional and statewide importance in maintaining the quality and quantity of Florida's water supply and water resources for the public and the environment.

(2) The Legislature also recognizes that the entire Green Swamp Area, which encompasses approximately 560,000 acres, is located in a regionally significant high recharge area of the Floridan Aquifer system, and that it helps protect coastal communities from saltwater intrusion.

(3) The Legislature finds that the Green Swamp Area or Polk County make up the headwaters or portions of the headwaters of six major river systems in the state, the Alafia, Hillsborough, Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers. In addition, due to the area's unique topography and geology, it receives no water inputs other than rainfall. The area is essential in maintaining the potentiometric head of the Floridan Aquifer system, which directly influences the aquifer's productivity for water supply.

(4) The Legislature also finds that the Green Swamp Area and surrounding areas are economically, environmentally, and socially defined by some of the most important and vulnerable water resources in the state.

(5) The Legislature recognizes that the Central Florida Water Initiative Guiding Document, dated January 30, 2015, and the Southern Water Use Caution Area Recovery Strategy, dated March 2006, found that the surface water and groundwater resources in the heartland counties of Hardee, Highlands, and

Polk are integral to the health, public safety, and economic future of those regions.

(6) The Legislature declares that there is an important state interest in partnering with regional water supply authorities, local governments, and water management districts in accordance with s. 373.705, to protect the water resources of the headwaters of the Alafia, Hillsborough, Kissimmee, Ocklawaha, Peace, and Withlacoochee Rivers and the areas that surround them. The Legislature further declares that priority state funding consideration must be given to funding solutions that manage the water resources of these headwaters and the local Floridan Aquifer system in the most efficient, cost-effective, and environmentally beneficial way.

Section 3. Section 373.463, Florida Statutes, is created to read:

373.463 Heartland headwaters annual reports.—

(1) The Polk Regional Water Cooperative, in coordination with all of its member county and municipal governments, shall prepare a comprehensive annual report on water resource projects identified for priority state funding within its members' jurisdictions. The report must include, at a minimum:

(a) A list of projects identified by the cooperative for priority state funding for each of the following categories. A project may be listed in more than one category:

1. Drinking water supply.

2. Wastewater, including reuse.

3. Stormwater and flood control.

4. Environmental restoration.

5. Conservation.

(b) A priority ranking for each listed project that will be ready to proceed in the upcoming fiscal year, identified by the categories specified in paragraph (a).

(c) The estimated cost of each listed project.

(d) The estimated completion date of each listed project.

(e) The source and amount of financial assistance to be provided by the cooperative, the member county or municipal governments, or other entities for each listed project.

(2) By December 1, 2017, and each year thereafter, the cooperative shall submit the comprehensive annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the department, and the appropriate water management districts.

(3) The cooperative shall also annually coordinate with the appropriate water management district to submit a status report on projects receiving priority state funding for inclusion in the consolidated water management district annual report required by s. 373.036(7).

Section 4. Present paragraph (h) of subsection (2) of section 212.055, Florida Statutes, is redesignated as paragraph (i) of that subsection and amended, and a new paragraph (h) is added to that subsection, to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the

maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(h) A county or municipality that receives proceeds under the provisions of this subsection may transfer such proceeds to an entity created under s. 373.713 whose purpose is to develop, recover, store, and supply water. Such transferred proceeds must be used for the purposes specified in paragraph (d).

(i) ~~(h)~~ Notwithstanding any other provision of this section, a county may ~~shall~~ not levy local option sales surtaxes authorized in this subsection and subsections (3), (4), and (5) in excess of a combined rate of 1 percent.

Section 5. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR KELLI STARGEL
22nd District

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 SB 928, related to *Water Protection and Sustainability*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

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)

4/25/17
Meeting Date

928
Bill Number (if applicable)

Topic Water Protection and Sustainability

Amendment Barcode (if applicable)

Name Frank Bernardino

Job Title

Address 201 W Park Ave Suite 100
Street

Tallahassee FL 32308
City *State* *Zip*

Phone (561) 718-2345

Email frank@anfieldflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Polk 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)

4/25/17
Meeting Date

~~SB~~ 928
Bill Number (if applicable)

Topic Hemp Related Legislation

Amendment Barcode (if applicable)

Name Tom Singleton

Job Title Partner

Address 285 Taylor Road
Street

Phone (850) 556-9733

Email tom@singletonconsulting.com

Niceville FL 32544
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Walton Area, FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 1320 (437538)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax) and Senator Stargel
SUBJECT:	Tax Administration
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Favorable**
2.	Gross	Diez-Arguelles	AFT	**Recommend: Fav/CS**
3.	Gross	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1320 amends various statutes relating to the administration of taxes. The bill contains recommendations made by the Department of Revenue (Department) and approved by the Cabinet, which are designed to reduce the burden on taxpayers.

The bill eliminates:

- The fees charged for sales and use tax registration; fuel and pollutants dealers licensing; perchloroethylene registration; dry cleaning tax registration; and fuel tax refunds;
- The requirement that circuit court judges report to the Department the names of decedents and estates in probate unless the Department is a creditor of the estate; and
- The requirement that vending machine operators post a notice stating that machines without a posted notice may be reported using a toll-free number and that someone reporting noncompliance may be eligible for a reward, and the $250 associated penalty for not posting the notice.

Additionally, the bill:

- Allows a tax collection service provider to waive a reemployment tax penalty imposed for failure to file certain quarterly reports electronically if the tax collection service provider finds a penalty to be inequitable;
- Extends due dates for annual filings and installment payments when the due date falls on a weekend or a holiday;

- Provides specific guidelines for the notification, adoption, and expiration of local ordinances imposing a tax on motor and diesel fuel prior to July 2002; and
- Repeals several obsolete provisions of chapter law that grant emergency rulemaking authority to the Department of Revenue.

The Revenue Estimating Conference estimates this bill will reduce General Revenue Fund receipts by $100,000 in Fiscal Year 2017-2018 and $200,000 annually thereafter.[1]

This act takes effect upon becoming a law, while most the fee eliminations and vending machine notice provisions proposed in the bill take effect January 1, 2018.

II. Present Situation:

The present situation for each issue is explained below in the Effect of Proposed Changes section.

III. Effect of Proposed Changes:

Sections 1, 22, 23. Elimination of Reporting Requirements

Present Situation: Section 198.30, F.S., requires circuit court judges to report the names of decedents and other information on estates in probate to both the Department and the Agency for Health Care Administration (AHCA). In addition, personal representatives are required to provide certain information to the Department and AHCA pursuant to s. 733.2121(3), F.S. Due to estate and intangible tax law changes, the Department no longer needs the information circuit court judges provide and, in most circumstances, does not need the information supplied by personal representatives.[2]

Proposed Change: The bill amends s. 198.30, F.S., to eliminate the requirement to provide information to the Department. Therefore, this information will be provided only to the AHCA. Additionally, s. 733.2121, F.S., is amended to require a notice of creditors to be served on the Department only when the Department is a creditor of the estate.

Sections 2, 3, 4, 5, 6, 7, 9, 10, 11, and 24. Fuel and Pollutants License Fee Elimination

Present Situation: Florida law imposes a $30 license tax on persons applying for an annual fuel or pollutants license and a $5 annual fee to obtain a license as a natural gas fuel retailer.[3] The Department issues the taxpayer a receipt, which must be posted on display in public view. All money derived from the license taxes pursuant to ss. 206.02, 206.021, 206.022, and 206.404, F.S., must be paid into the State Treasury to the credit of the General Revenue Fund.[4]

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[1] Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference, Tax Administration*, (Jan. 1, 2017), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page1-10.pdf (last visited April 10, 2017).
[2] Department of Revenue, *Department of Revenue 2017 Legislative Concepts*, (Sept. 09, 2016) (on file with the Senate Appropriations Subcommittee on Finance and Tax).
[3] *See* ch. 206, F.S.
[4] Section 206.406, F.S.

Proposed Change: The bill eliminates the $30 annual license tax required for a fuel or pollutants license as well as the $5 annual fee to obtain a natural gas fuel license. Additionally, s. 206.405, F.S., the receipt for payment of the license tax, and s. 206.406, F.S., the disposition of license tax funds, are repealed. The bill amends s. 206.998, F.S., to conform to the repealed sections.

These sections are effective January 1, 2018.

Section 8. Fuel Tax Refund Fee Elimination

Present Situation: Florida law allows certain taxpayers to obtain quarterly refunds of a portion of the tax paid on fuel purchases.[5] These taxpayers must purchase the fuel for use in agriculture, commercial fishing, school buses, mass public transportation, or another authorized purpose.[6] The Department is required to deduct a $2 fee from each of these quarterly tax refunds, which is deposited into the General Revenue Fund.[7]

Proposed Change: The bill eliminates the $2 deduction from the quarterly fuel tax refunds made to these taxpayers.

This section is effective January 1, 2018.

Section 12. Elimination of Vending Machine Notice Requirement

Present Situation: Sales tax is due on the sale of food, beverages, and most items purchased through vending machines in Florida. Vending machine owners must display a notice on each vending machine which provides that machines without a posted notice may be reported using a toll-free number and that a person who reports noncompliance may be eligible for a reward. Florida law imposes a $250 penalty for each vending machine that does not display the notice.[8]

Proposed Change: The bill eliminates the required notice and associated penalty.

This section is effective January 1, 2018.

Sections 13 and 14. Sales and Use Tax Registration Fee Elimination

Present Situation: Florida law imposes a $5 fee on each business location that registers with the Department to collect, report, and remit sales and use tax. However, the $5 registration fee is waived if a business applies online through the Department's online registration process.[9] Section 212.0596, F.S., provides that DOR may establish procedures to provide for the waiver of registration fees from unregistered persons who make mail order purchases for which tax is required to be remitted.

Proposed Change: The bill eliminates the $5 application fee.

[5] Section 206.41(5), F.S.
[6] Section 206.41(4), F.S.
[7] Section 206.41(5)(c)2., F.S.
[8] Section 212.0515, F.S.
[9] Section 212.18

These sections are effective January 1, 2018.

Sections 15 and 16. Ninth-cent and Local Option Dates

Present Situation: Chapter 336, F.S., provides clear direction on the administration of rate changes for ninth-cent and local option fuel taxes imposed after July 1, 2002. For taxes imposed prior to July 2002, however, the statutes do not clearly identify adoption dates for ordinances or the length of time the adopted ordinance will remain in effect.

Proposed Change: The bill provides specific guidelines and clarification for the notification, adoption, and expiration of the ninth-cent fuel taxes imposed prior to July 2002. For those tax levies, any re-imposition would be required to be levied before July 1 to allow the Department time to make any necessary changes to distribution programs.

Section 17. Dry Cleaning Tax Registration Fee Elimination

Present Situation: Dry cleaning facilities are required to register with the Department and pay a $30 fee.[10] If a facility registers electronically, the Department waives the $30 fee as authorized by statute. The majority of these registrations are electronic and no fee is charged.[11]

Proposed Change: The bill eliminates the $30 registration fee for all registrations.

This section is effective on January 1, 2018.

Section 18. Perchloroethylene Registration Fee Elimination

Present Situation: Any person producing, importing, or selling perchloroethylene (perc) is required to register with the Department and pay a $30 fee.[12] Additionally, the person must also register for a pollutants license that requires a $30 license tax. The Department has allowed perc registrants to designate their perc registration on the pollutants registration and has not required a separate application and fee for a person dealing in perc.[13]

Present Change: The bill repeals the $30 perc registration fee.

Sections 19 and 20. Extension of Annual and Installment Due Dates

Present Situation: Due dates for reemployment tax installment payments and annual filings are provided for by statute and do not allow for additional time when the due dates fall on a Saturday, Sunday, or holiday. Quarterly filing due dates are provided for by rule and have provisions allowing later due dates when the date falls on a weekend or holiday.[14]

[10] Section 376.70, F.S.
[11] *See supra* note 2.
[12] Section 376.75, F.S.
[13] *See supra* note 2.
[14] Sections 443.131 and 443.141, F.S.

Proposed Change: The bill allows for annual filings and installment payments to be submitted the next day that is not a Saturday, Sunday, or holiday or any other day when the United States Postal Service is closed.

Section 21. Reemployment Tax Penalty Waiver

Present Situation: Florida law requires certain employers to file their Employers Quarterly Report electronically.[15] When employers fail to file electronically as required, current law imposes a penalty. The tax collection service provider (the department) has no flexibility to waive the penalty.

Proposed Change: The bill allows a tax collection service provider (the department) to waive the penalty imposed for a failure to file electronically if the tax collection service provider finds a penalty to be inequitable. Grounds for inequity include the death or serious illness of the person who prepares and files the report, destructions of the business records by fire or another casualty, or unscheduled and unavoidable computer downtime.

Section 25. Repeal of Obsolete Rulemaking authority

Present Situation: The Department of Revenue has the authority to adopt rules to enforce the laws it administers.[16] Section 125.54(4) provides emergency rulemaking authority to an agency if the agency finds that an immediate danger to the public health, safety, or welfare requires emergency action. Emergency rules adopted by an agency are temporary and not renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule.[17]

Legislation often contains an explicit recognition of the need for emergency rules without a mechanism to repeal such authority when the emergency rulemaking process becomes obsolete.

Proposed Change: The bill repeals several obsolete provisions of chapter law that grant emergency rulemaking authority to the Department of Revenue.

Section 26. Effective Date

The bill takes effect upon becoming a law, except as otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[15] Section 443.163, F.S.
[16] *See, e.g.,* s. 212.18(2) and s. 220.51, F.S.
[17] Section 120.54(4)(c), F.S.

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 this bill will reduce General Revenue Fund receipts by $100,000 in Fiscal Year 2017-2018 and $200,000 annually thereafter.[18]

B. Private Sector Impact:

The repeal of various licensing and registration fees will reduce costs businesses pay and reduce the administrative costs of completing the paperwork associated with the fees.

C. Government Sector Impact:

The Department of Revenue expects an insignificant operational impact from the provisions of this bill.[19]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 198.30, 206.02, 206.021, 206.022, 206.03, 206.045, 206.41, 206.9943, 206.9952, 206.998, 206.9865, 212.0515, 212.0596, 212.18, 336.021, 336.025, 376.70, 376.75, 443.131, 443.141, 443.163, and 733.2121.

This bill reenacts section 733.701 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 206.405 and 206.406.

[18] *See supra* note 1.
[19] Department of Revenue, *2017 Legislative Bill Analysis* (March 7, 2017) (on file with the Senate Judiciary Committee).

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 by Appropriations Subcommittee on Finance and Tax on April 13, 2017:
The committee substitute repeals several obsolete provisions of chapter law that grant emergency rulemaking authority to the Department of Revenue.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 713 and 714
insert:

Section 22. Section 563.01, Florida Statutes, is amended to read:

563.01 Definitions ~~Definition~~.—The term: ~~terms~~

(1) "Beer" means a brewed beverage that meets the federal definition of beer in 27 C.F.R. s. 25.11 and contains less than 6 percent alcohol by volume. ~~and~~

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(2) "Malt beverage" means any ~~mean all~~ brewed beverage ~~beverages~~ containing malt.

The terms "beer" and "malt beverage" have the same meaning when either term is used in the Beverage Law. The terms do not include alcoholic beverages that require a certificate of label approval by the Federal Government as wine or as distilled spirits.

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

And the title is amended as follows:

Delete line 67

and insert:

penalty under certain circumstances; amending s. 563.01, F.S.; revising the definitions of the terms "beer" and "malt beverage" for purposes of the Beverage Law; amending s.

576-03806-17

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to tax administration; amending s. 198.30, F.S.; deleting a requirement for circuit judges to monthly report certain information to the Department of Revenue relating to the estates of certain decedents; amending s. 206.02, F.S.; deleting requirements to pay license taxes for a terminal supplier license, an importer, exporter, or blender of motor fuels license, or a wholesaler of motor fuel license; conforming a provision to changes made by the act; amending s. 206.021, F.S.; deleting a requirement to pay license taxes for a carrier license; amending s. 206.022, F.S.; deleting a requirement to pay license taxes for a terminal operator license; amending s. 206.03, F.S.; conforming a provision to changes made by the act; amending s. 206.045, F.S.; conforming a provision to changes made by the act; repealing ss. 206.405 and 206.406, F.S., relating to receipt for payment of license taxes and disposition of license tax funds, respectively; amending s. 206.41, F.S.; deleting a requirement for the department to deduct a specified fee from certain motor fuel refund claims; amending s. 206.9943, F.S.; deleting a requirement to pay license fees for a pollutant tax license; amending s. 206.9952, F.S.; deleting a requirement to pay license fees for a natural gas fuel retailer license; amending s.

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206.9865, F.S.; deleting a requirement to pay application fees for an aviation fuel tax license for commercial air carriers; amending s. 212.0515, F.S.; deleting a requirement for vending machine operators to post a specified notice on vending machines; deleting a provision requiring the department to pay an informant certain rewards for reporting vending machines without the notice; conforming provisions to changes made by the act; amending s. 212.0596, F.S.; deleting an authorization for procedures that waive registration fees in relation to the use tax on mail order purchases by certain persons; amending s. 212.18, F.S.; deleting a requirement for certificates of registration fees for certain dealers in relation to the sales and use tax; conforming provisions to changes made by the act; amending s. 336.021, F.S.; specifying a condition for the reimposition of ninth-cent fuel taxes on motor and diesel fuels by a county; amending s. 336.025, F.S.; specifying a condition for the reimposition of local option fuel taxes on motor and diesel fuels by a county; providing construction relating to requirements on a decision to rescind a tax; amending s. 376.70, F.S.; deleting a requirement for drycleaning or dry drop-off facilities to pay registration fees to the department; amending s. 376.75, F.S.; deleting a requirement to pay registration fees for certain persons producing, importing, selling, or using perchloroethylene; amending s. 443.131, F.S.; revising a deadline for

employers of employees performing domestic services to annually report wages and pay certain contributions under the Reemployment Assistance Program Law; defining the term "holiday"; amending s. 443.141, F.S.; specifying a due date of certain employer contributions if such date falls on a weekend or holiday; defining the term "holiday"; conforming cross-references; amending s. 443.163, F.S.; deleting a form name; authorizing reemployment assistance tax collection service providers to waive a certain penalty under certain circumstances; amending s. 733.2121, F.S.; providing that a personal representative may serve a notice to creditors on the department only under certain circumstances; deleting a provision providing construction; reenacting s. 733.701, F.S., relating to notifying creditors, to incorporate the amendment made to s. 733.2121, F.S., in a reference thereto; amending s. 206.998, F.S.; conforming cross-references; repealing s. 1 of ch. 2007-339, s. 13 of ch. 2008-173, s. 6 of ch. 2009-131, ss. 8(2) and 24 of ch. 2010-138, s. 6 of ch. 2010-149, s. 7 of ch. 2010-166, s. 35 of ch. 2011-76, s. 4 of ch. 2011-93, s. 3 of ch. 2011-229, s. 25 of ch. 2012-32, and s. 3 of ch. 2013-46, Laws of Florida, relating to obsolete emergency rulemaking authority of the department; providing an effective date.

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

Section 1. Section 198.30, Florida Statutes, is amended to read:

198.30 Circuit judge to report names of decedents, etc.—Each circuit judge of this state shall, on or before the 10th day of every month, notify the Agency for Health Care Administration ~~department~~ of the names of all decedents; the names and addresses of the respective personal representatives, administrators, or curators appointed; the amount of the bonds, if any, required by the court; and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before the circuit judge or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding month; and such report shall contain any other information that ~~which~~ the circuit judge may have concerning the estates of such decedents. ~~In addition, a copy of this report shall be provided to the Agency for Health Care Administration.~~ A circuit judge shall also furnish forthwith such further information, from the records and files of the circuit court in regard to such estates, as the department may from time to time require.

Section 2. Effective January 1, 2018, subsections (2), (3), and (4), paragraph (a) of subsection (7), and paragraph (b) of subsection (8) of section 206.02, Florida Statutes, are amended to read:

206.02 Application for license; temporary license; terminal suppliers, importers, exporters, blenders, biodiesel manufacturers, and wholesalers.—

(2) To procure a terminal supplier license, a person shall

file with the department an application under oath, and in such form as the department may prescribe, setting forth:

(a) The name under which the person will transact business within the state and that person's registration number under s. 4101 of the Internal Revenue Code.

(b) The location, with street number address, of his or her principal office or place of business and the location where records will be made available for inspection.

(c) The name and complete residence address of the owner or the names and addresses of the partners, if such person is a partnership, or of the principal officers, if such person is a corporation or association; and, if such person is a corporation organized under the laws of another state, territory, or country, he or she shall also indicate the state, territory, or country where the corporation is organized and the date the corporation was registered with the Department of State as a foreign corporation authorized to transact business in the state.

~~The application shall require a $30 license tax.~~ Each license must ~~shall~~ be renewed annually through application~~, including an annual $30 license tax~~.

(3) To procure an importer, exporter, or blender of motor fuels license, a person shall file with the department an application under oath, and in such form as the department may prescribe, setting forth:

(a) The name under which the person will transact business within the state.

(b) The location, with street number address, of his or her

principal office or place of business and the location where records will be made available for inspection.

(c) The name and complete residence address of the owner or the names and addresses of the partners, if such person is a partnership, or of the principal officers, if such person is a corporation or association; and, if such person is a corporation organized under the laws of another state, territory, or country, he or she shall also indicate the state, territory, or country where the corporation is organized and the date the corporation was registered with the Department of State as a foreign corporation authorized to transact business in the state.

~~The application shall require a $30 license tax.~~ Each license must ~~shall~~ be renewed annually through application~~, including an annual $30 license tax~~.

(4) To procure a wholesaler of motor fuel license, a person shall file with the department an application under oath and in such form as the department may prescribe, setting forth:

(a) The name under which the person will transact business within the state.

(b) The location, with street number address, of his or her principal office or place of business within this state and the location where records will be made available for inspection.

(c) The name and complete residence address of the owner or the names and addresses of the partners, if such person is a partnership, or of the principal officers, if such person is a corporation or association; and, if such person is a corporation organized under the laws of another state, territory, or

country, he or she shall also indicate the state, territory, or country where the corporation is organized and the date the corporation was registered with the Department of State as a foreign corporation authorized to transact business in the state.

~~The application shall require a $30 license tax.~~ Each license must ~~shall~~ be renewed annually through application~~, including an annual $30 license fee~~.

(7)(a) If all applicants for a license hold a current license in good standing of the same type and kind, the department shall issue a temporary license upon the filing of a completed application~~, payment of all fees,~~ and the posting of adequate bond. A temporary license shall automatically expire 90 days after its effective date or, prior to the expiration of 90 days or the period of any extension, upon issuance of a permanent license or of a notice of intent to deny a permanent license. A temporary license may be extended once for a period not to exceed 60 days, upon written request of the applicant, subject to the restrictions imposed by this subsection.

(8)

(b) Notwithstanding the provisions of this chapter requiring a license ~~tax~~ and a bond or criminal background check, the department may issue a temporary license as an importer or exporter to a person who holds a valid Florida wholesaler license or to a person who is an unlicensed dealer. A license may be issued under this subsection only to a business that has a physical location in this state and holds a valid Florida sales and use tax certificate of registration or that holds a

valid fuel license issued by another state.

Section 3. Effective January 1, 2018, subsection (3) and paragraph (b) of subsection (5) of section 206.021, Florida Statutes, are amended to read:

206.021 Application for license; carriers.—

(3) ~~The application shall require a $30 license tax.~~ Each license must ~~shall~~ be renewed annually through application~~, including an annual $30 license tax~~.

(5)

(b) Notwithstanding the provisions of this chapter requiring a license ~~tax~~ and a bond or criminal background check, the department may issue a temporary license as a carrier to a person who holds a valid Florida wholesaler, importer, exporter, or blender license or to a person who is an unlicensed dealer. A license may be issued under this subsection only to a business that has a physical location in this state and holds a valid Florida sales and use tax certificate of registration or that holds a valid fuel license issued by another state.

Section 4. Effective January 1, 2018, subsection (2) of section 206.022, Florida Statutes, is amended to read:

206.022 Application for license; terminal operators.—

(2) ~~The application shall require a $30 license tax.~~ Each license shall be renewed annually through application~~, including an annual $30 license tax~~.

Section 5. Effective January 1, 2018, subsection (1) of section 206.03, Florida Statutes, is amended to read:

206.03 Licensing of terminal suppliers, importers, exporters, and wholesalers.—

(1) The application in proper form having been accepted for

filing~~, the filing fee paid,~~ and the bond accepted and approved, except as provided in s. 206.05(1), the department shall issue to such person a license to transact business in the state, subject to cancellation of such license as provided by law.

Section 6. Effective January 1, 2018, section 206.045, Florida Statutes, is amended to read:

206.045 Licensing period~~; cost for license issuance~~.—Beginning January 1, 1998, the licensing period under this chapter shall be a calendar year, or any part thereof. ~~The cost of any such license issued pursuant to this chapter shall be $30.~~

Section 7. Effective January 1, 2018, ss. 206.405 and 206.406, Florida Statutes, are repealed.

Section 8. Effective January 1, 2018, paragraph (c) of subsection (5) of section 206.41, Florida Statutes, is amended to read:

206.41 State taxes imposed on motor fuel.—

(5)

(c)1. No refund may be authorized unless a sworn application therefor containing such information as the department may determine is filed with the department not later than the last day of the month following the quarter for which the refund is claimed. However, when a justified excuse for late filing is presented to the department and the last preceding claim was filed on time, the deadline for filing may be extended an additional month. No refund will be authorized unless the amount due is for $5 or more for any refund period and unless application is made upon forms prescribed by the department.

2. Claims made for refunds provided pursuant to subsection

(4) shall be paid quarterly. ~~The department shall deduct a fee of $2 for each claim, which fee shall be deposited in the General Revenue Fund.~~

Section 9. Effective January 1, 2018, subsection (3) of section 206.9943, Florida Statutes, is amended to read:

206.9943 Pollutant tax license.—

(3) The license must be renewed annually~~, and the fee for original application or renewal is $30~~.

Section 10. Effective January 1, 2018, subsection (9) of section 206.9952, Florida Statutes, is amended to read:

206.9952 Application for license as a natural gas fuel retailer.—

(9) ~~The license application requires a license fee of $5.~~ Each license shall be renewed annually by submitting a reapplication ~~and the license fee to the department~~. ~~The license fee shall be paid to the department for deposit into the General Revenue Fund.~~

Section 11. Effective January 1, 2018, subsection (3) of section 206.9865, Florida Statutes, is amended to read:

206.9865 Commercial air carriers; registration; reporting.—

(3) The application must be renewed annually ~~and the fee for application or renewal is $30~~.

Section 12. Effective January 1, 2018, subsections (3) and (4) and present subsection (7) of section 212.0515, Florida Statutes, are amended to read:

212.0515 Sales from vending machines; sales to vending machine operators; special provisions; registration; penalties.—

(3)~~(a)~~ An operator of a vending machine may not operate or cause to be operated in this state any vending machine until the

operator has registered with the department and~~,~~ has obtained a separate registration certificate for each county in which such machines are located~~, and has affixed a notice to each vending machine selling food or beverages~~. ~~The notice must be conspicuously displayed on the vending machine when it is being operated in this state and shall contain the following language in conspicuous type: NOTICE TO CUSTOMER: FLORIDA LAW REQUIRES THIS NOTICE TO BE POSTED ON ALL FOOD AND BEVERAGE VENDING MACHINES. REPORT ANY MACHINE WITHOUT A NOTICE TO (TOLL-FREE NUMBER). YOU MAY BE ELIGIBLE FOR A CASH REWARD. DO NOT USE THIS NUMBER TO REPORT PROBLEMS WITH THE VENDING MACHINE SUCH AS LOST MONEY OR OUT-OF-DATE PRODUCTS.~~

~~(b)~~ The department shall establish a toll-free number to report any violations of this section. ~~Upon a determination that a violation has occurred, the department shall pay the informant a reward of up to 10 percent of previously unpaid taxes recovered as a result of the information provided. A person who receives information concerning a violation of this section from an employee as specified in s. 213.30 is not eligible for a cash reward.~~

~~(4) A penalty of $250 per machine is imposed on an operator who fails to properly obtain and display the required notice on any machine. Penalties accrue interest as provided for delinquent taxes under this chapter and apply in addition to all other applicable taxes, interest, and penalties.~~

(6)~~(7)~~ The department may adopt rules necessary to administer ~~the provisions of~~ this section ~~and may establish a schedule for phasing in the requirement that existing notices be replaced with revised notices displayed on vending machines~~.

Section 13. Effective January 1, 2018, subsection (7) of section 212.0596, Florida Statutes, is amended to read:

212.0596 Taxation of mail order sales.—

(7) The department may establish by rule procedures for collecting the use tax from unregistered persons who but for their mail order purchases would not be required to remit sales or use tax directly to the department. The procedures may provide for waiver of registration ~~and registration fees~~, provisions for irregular remittance of tax, elimination of the collection allowance, and nonapplication of local option surtaxes.

Section 14. Effective January 1, 2018, paragraphs (a) and (c) of subsection (3) of section 212.18, Florida Statutes, are amended to read:

212.18 Administration of law; registration of dealers; rules.—

(3)(a) A person desiring to engage in or conduct business in this state as a dealer, or to lease, rent, or let or grant licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, or tourist or trailer camps that are subject to tax under s. 212.03, or to lease, rent, or let or grant licenses in real property, and a person who sells or receives anything of value by way of admissions, must file with the department an application for a certificate of registration for each place of business. The application must include the names of the persons who have interests in such business and their residences, the address of the business, and other data reasonably required by the department. However, owners and operators of vending

machines or newspaper rack machines are required to obtain only one certificate of registration for each county in which such machines are located. The department, by rule, may authorize a dealer that uses independent sellers to sell its merchandise to remit tax on the retail sales price charged to the ultimate consumer in lieu of having the independent seller register as a dealer and remit the tax. The department may appoint the county tax collector as the department's agent to accept applications for registrations. The application must be submitted to the department before the person, firm, copartnership, or corporation may engage in such business~~, and it must be accompanied by a registration fee of $5~~. ~~However, a registration fee is not required to accompany an application to engage in or conduct business to make mail order sales. The department may waive the registration fee for applications submitted through the department's Internet registration process.~~

(c)1. A person who engages in acts requiring a certificate of registration under this subsection and who fails or refuses to register commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Such acts are subject to injunctive proceedings as provided by law. A person who engages in acts requiring a certificate of registration and who fails or refuses to register is also subject to a $100 initial registration fee ~~in lieu of the $5 registration fee required by paragraph (a)~~. However, the department may waive the ~~increase in the~~ registration fee if it finds that the failure to register was due to reasonable cause and not to willful negligence, willful neglect, or fraud.

2.a. A person who willfully fails to register after the

department provides notice of the duty to register as a dealer commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. The department shall provide written notice of the duty to register to the person by personal service or by sending notice by registered mail to the person's last known address. The department may provide written notice by both methods described in this sub-subparagraph.

Section 15. Subsection (5) of section 336.021, Florida Statutes, is amended to read:

336.021 County transportation system; levy of ninth-cent fuel tax on motor fuel and diesel fuel.—

(5) All impositions of the tax shall be levied before October 1 of each year to be effective January 1 of the following year. However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be reimposed at the current authorized rate <u>if the imposition of the tax is levied before July 1 and is</u> ~~to be~~ effective September 1 of the year of expiration. All impositions shall be required to end on December 31 of a year. A decision to rescind the tax shall not take effect on any date other than December 31 and shall require a minimum of 60 days' notice to the department of such decision.

Section 16. Paragraphs (a) and (b) of subsection (1) and paragraph (a) of subsection (5) of section 336.025, Florida Statutes, are amended to read:

336.025 County transportation system; levy of local option fuel tax on motor fuel and diesel fuel.—

(1)(a) In addition to other taxes allowed by law, there may

be levied as provided in ss. 206.41(1)(e) and 206.87(1)(c) a 1-cent, 2-cent, 3-cent, 4-cent, 5-cent, or 6-cent local option fuel tax upon every gallon of motor fuel and diesel fuel sold in a county and taxed under the provisions of part I or part II of chapter 206.

1. All impositions and rate changes of the tax shall be levied before October 1 to be effective January 1 of the following year for a period not to exceed 30 years, and the applicable method of distribution shall be established pursuant to subsection (3) or subsection (4). However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be reimposed at the current authorized rate if the imposition of the tax is levied before July 1 and is effective September 1 of the year of expiration. Upon expiration, the tax may be relevied provided that a redetermination of the method of distribution is made as provided in this section.

2. County and municipal governments shall utilize moneys received pursuant to this paragraph only for transportation expenditures.

3. Any tax levied pursuant to this paragraph may be extended on a majority vote of the governing body of the county. A redetermination of the method of distribution shall be established pursuant to subsection (3) or subsection (4), if, after July 1, 1986, the tax is extended or the tax rate changed, for the period of extension or for the additional tax.

(b) In addition to other taxes allowed by law, there may be levied as provided in s. 206.41(1)(e) a 1-cent, 2-cent, 3-cent, 4-cent, or 5-cent local option fuel tax upon every gallon of

motor fuel sold in a county and taxed under the provisions of part I of chapter 206. The tax shall be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body of the county or by referendum.

1. All impositions and rate changes of the tax shall be levied before October 1, to be effective January 1 of the following year. However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be reimposed at the current authorized rate if the imposition of the tax is levied before July 1 and is effective September 1 of the year of expiration.

2. The county may, prior to levy of the tax, establish by interlocal agreement with one or more municipalities located therein, representing a majority of the population of the incorporated area within the county, a distribution formula for dividing the entire proceeds of the tax among county government and all eligible municipalities within the county. If no interlocal agreement is adopted before the effective date of the tax, tax revenues shall be distributed pursuant to the provisions of subsection (4). If no interlocal agreement exists, a new interlocal agreement may be established prior to June 1 of any year pursuant to this subparagraph. However, any interlocal agreement agreed to under this subparagraph after the initial levy of the tax or change in the tax rate authorized in this section shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds which are backed by taxes authorized by this paragraph, and the amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of

principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of establishment of the new interlocal agreement.

3. County and municipal governments shall use moneys received pursuant to this paragraph for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan or for expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments. For purposes of this paragraph, expenditures for the construction of new roads, the reconstruction or resurfacing of existing paved roads, or the paving of existing graded roads shall be deemed to increase capacity and such projects shall be included in the capital improvements element of an adopted comprehensive plan. Expenditures for purposes of this paragraph shall not include routine maintenance of roads.

(5)(a) By October 1 of each year, the county shall notify the Department of Revenue of the rate of the taxes levied pursuant to paragraphs (1)(a) and (b), and of its decision to rescind or change the rate of a tax, if applicable, and shall provide the department with a certified copy of the interlocal agreement established under subparagraph (1)(b)2. or subparagraph (3)(a)1. with distribution proportions established by such agreement or pursuant to subsection (4), if applicable. A decision to rescind a tax may not take effect on any date other than December 31, regardless of when the tax was originally imposed, and requires a minimum of 60 days' notice to

the Department of Revenue of such decision.

Section 17. Effective January 1, 2018, subsection (2) of section 376.70, Florida Statutes, is amended to read:

376.70 Tax on gross receipts of drycleaning facilities.—

(2) Each drycleaning facility or dry drop-off facility imposing a charge for the drycleaning or laundering of clothing or other fabrics is required to register with the Department of Revenue and become licensed for the purposes of this section. The owner or operator of the facility shall register the facility with the Department of Revenue. Drycleaning facilities or dry drop-off facilities operating at more than one location are only required to have a single registration. ~~The fee for registration is $30. The owner or operator of the facility shall pay the registration fee to the Department of Revenue. The department may waive the registration fee for applications submitted through the department's Internet registration process.~~

Section 18. Subsection (2) of section 376.75, Florida Statutes, is amended to read:

376.75 Tax on production or importation of perchloroethylene.—

(2) Any person producing in, importing into, or causing to be imported into, or selling in, this state perchloroethylene must register with the Department of Revenue and become licensed for the purposes of remitting the tax pursuant to, or providing information required by, this section. Such person must register as a seller of perchloroethylene, a user of perchloroethylene in drycleaning facilities, or a user of perchloroethylene for purposes other than drycleaning. Persons operating at more than

one location are only required to have a single registration. ~~The fee for registration is $30.~~ Failure to timely register is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 19. Subsection (1) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(1) PAYMENT OF CONTRIBUTIONS.—Contributions accrue and are payable by each employer for each calendar quarter he or she is subject to this chapter for wages paid during each calendar quarter for employment. Contributions are due and payable by each employer to the tax collection service provider, in accordance with the rules adopted by the Department of Economic Opportunity or the state agency providing tax collection services. This subsection does not prohibit the tax collection service provider from allowing, at the request of the employer, employers of employees performing domestic services, as defined in s. 443.1216(6), to pay contributions or report wages at intervals other than quarterly when the nonquarterly payment or reporting assists the service provider and when nonquarterly payment and reporting is authorized under federal law. Employers of employees performing domestic services may report wages and pay contributions annually, with a due date of no later than January 31, unless that day is a Saturday, Sunday, or holiday, in which event the due date is the next day that is not a Saturday, Sunday, or holiday. For purposes of this subsection, the term "holiday" means a day designated under s. 110.117(1) and (2) and any other day when the offices of the United States Postal Service are closed ~~January 1 and a delinquency date of~~

~~February 1~~. To qualify for this election, the employer must employ only employees performing domestic services, be eligible for a variation from the standard rate computed under subsection (3), apply to this program no later than December 1 of the preceding calendar year, and agree to provide the department or its tax collection service provider with any special reports that are requested, including copies of all federal employment tax forms. An employer who fails to timely furnish any wage information required by the department or its tax collection service provider loses the privilege to participate in this program, effective the calendar quarter immediately after the calendar quarter the failure occurred. The employer may reapply for annual reporting when a complete calendar year elapses after the employer's disqualification if the employer timely furnished any requested wage information during the period in which annual reporting was denied. An employer may not deduct contributions, interests, penalties, fines, or fees required under this chapter from any part of the wages of his or her employees. A fractional part of a cent less than one-half cent shall be disregarded from the payment of contributions, but a fractional part of at least one-half cent shall be increased to 1 cent.

Section 20. Paragraph (d) of subsection (1) of section 443.141, Florida Statutes, is amended to read:

443.141 Collection of contributions and reimbursements.—

(1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT, ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

(d) *Payments for contributions.*—For an annual administrative fee not to exceed $5, a contributing employer may pay its quarterly contributions due for wages paid in the first

three quarters of each year in equal installments if those contributions are paid as follows:

1. For contributions due for wages paid in the first quarter of each year, one-fourth of the contributions due must be paid on or before April 30, one-fourth must be paid on or before July 31, one-fourth must be paid on or before October 31, and one-fourth must be paid on or before December 31.

2. In addition to the payments specified in subparagraph 1., for contributions due for wages paid in the second quarter of each year, one-third of the contributions due must be paid on or before July 31, one-third must be paid on or before October 31, and one-third must be paid on or before December 31.

3. In addition to the payments specified in subparagraphs 1. and 2., for contributions due for wages paid in the third quarter of each year, one-half of the contributions due must be paid on or before October 31, and one-half must be paid on or before December 31.

4. If any of the due dates in this paragraph falls on a Saturday, Sunday, or holiday, the due date is the next day that is not a Saturday, Sunday, or holiday. For purposes of this paragraph, the term "holiday" means a day designated under s. 110.117(1) and (2) and any other day when the offices of the United States Postal Service are closed.

5.~~4.~~ The annual administrative fee assessed for electing to pay under the installment method shall be collected at the time the employer makes the first installment payment each year. The fee shall be segregated from the payment and deposited into the Operating Trust Fund of the Department of Revenue.

6.~~5.~~ Interest does not accrue on any contribution that

becomes due for wages paid in the first three quarters of each year if the employer pays the contribution in accordance with subparagraphs 1.-5. ~~subparagraphs 1.-4.~~ Interest and fees continue to accrue on prior delinquent contributions and commence accruing on all contributions due for wages paid in the first three quarters of each year which are not paid in accordance with subparagraphs 1.-4. ~~subparagraphs 1.-3.~~ Penalties may be assessed in accordance with this chapter. The contributions due for wages paid in the fourth quarter are not affected by this paragraph and are due and payable in accordance with this chapter.

Section 21. Section 443.163, Florida Statutes, is amended to read:

443.163 Electronic reporting and remitting of contributions and reimbursements.—

(1) An employer may file any report and remit any contributions or reimbursements required under this chapter by electronic means. The Department of Economic Opportunity or the state agency providing reemployment assistance tax collection services shall adopt rules prescribing the format and instructions necessary for electronically filing reports and remitting contributions and reimbursements to ensure a full collection of contributions and reimbursements due. The acceptable method of transfer, the method, form, and content of the electronic means, and the method, if any, by which the employer will be provided with an acknowledgment shall be prescribed by the department or its tax collection service provider. However, any employer who employed 10 or more employees in any quarter during the preceding state fiscal year

must file the Employers Quarterly Reports ~~(UCT-6)~~ for the current calendar year and remit the contributions and reimbursements due by electronic means approved by the tax collection service provider. A person who prepared and reported for 100 or more employers in any quarter during the preceding state fiscal year must file the Employers Quarterly Reports ~~(UCT-6)~~ for each calendar quarter in the current calendar year, beginning with reports due for the second calendar quarter of 2003, by electronic means approved by the tax collection service provider.

(2)(a) An employer who is required by law to file an Employers Quarterly Report ~~(UCT-6)~~ by approved electronic means, but who files the report by a means other than approved electronic means, is liable for a penalty of $50 for that report and $1 for each employee. This penalty is in addition to any other penalty provided by this chapter. However, the penalty does not apply if the tax collection service provider waives the electronic filing requirement in advance. An employer who fails to remit contributions or reimbursements by approved electronic means as required by law is liable for a penalty of $50 for each remittance submitted by a means other than approved electronic means. This penalty is in addition to any other penalty provided by this chapter.

(b) A person who prepared and reported for 100 or more employers in any quarter during the preceding state fiscal year, but who fails to file an Employers Quarterly Report ~~(UCT-6)~~ for each calendar quarter in the current calendar year by approved electronic means, is liable for a penalty of $50 for that report and $1 for each employee. This penalty is in addition to any

other penalty provided by this chapter. However, the penalty does not apply if the tax collection service provider waives the electronic filing requirement in advance.

(3) The tax collection service provider may waive the requirement to file an Employers Quarterly Report ~~(UCT-6)~~ by electronic means for employers that are unable to comply despite good faith efforts or due to circumstances beyond the employer's reasonable control.

(a) As prescribed by the Department of Economic Opportunity or its tax collection service provider, grounds for approving the waiver include, but are not limited to, circumstances in which the employer does not:

1. Currently file information or data electronically with any business or government agency; or

2. Have a compatible computer that meets or exceeds the standards prescribed by the department or its tax collection service provider.

(b) The tax collection service provider shall accept other reasons for requesting a waiver from the requirement to submit the Employers Quarterly Report ~~(UCT-6)~~ by electronic means, including, but not limited to:

1. That the employer needs additional time to program his or her computer;

2. That complying with this requirement causes the employer financial hardship; or

3. That complying with this requirement conflicts with the employer's business procedures.

(c) The department or the state agency providing reemployment assistance tax collection services may establish by

rule the length of time a waiver is valid and may determine whether subsequent waivers will be authorized, based on this subsection.

(4) As used in this section, the term "electronic means" includes, but is not limited to, electronic data interchange; electronic funds transfer; and use of the Internet, telephone, or other technology specified by the Department of Economic Opportunity or its tax collection service provider.

(5) The tax collection service provider may waive the penalty imposed by this section if a written request for a waiver is filed which establishes that imposition would be inequitable. Examples of inequity include, but are not limited to, situations where the failure to electronically file was caused by one of the following factors:

(a) Death or serious illness of the person responsible for the preparation and filing of the report.

(b) Destruction of the business records by fire or other casualty.

(c) Unscheduled and unavoidable computer downtime.

Section 22. Paragraph (e) of subsection (3) of section 733.2121, Florida Statutes, is amended to read:

733.2121 Notice to creditors; filing of claims.—

(3)

(e) The personal representative may serve a notice to creditors on the Department of Revenue only when the Department of Revenue is determined to be a creditor under paragraph (a) ~~If the Department of Revenue has not previously been served with a copy of the notice to creditors, then service of the inventory on the Department of Revenue shall be the equivalent of service~~

~~of a copy of the notice to creditors~~.

Section 23. For the purpose of incorporating the amendment made by this act to section 733.2121, Florida Statutes, in a reference thereto, section 733.701, Florida Statutes, is reenacted to read:

733.701 Notifying creditors.—Unless creditors' claims are otherwise barred by s. 733.710, every personal representative shall cause notice to creditors to be published and served under s. 733.2121.

Section 24. Effective January 1, 2018, section 206.998, Florida Statutes, is amended to read:

206.998 Applicability of specified sections of parts I and II.—The provisions of ss. 206.01, 206.02, 206.025, 206.026, 206.027, 206.028, 206.03, 206.05, 206.055, 206.06, 206.07, 206.075, 206.09, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15, 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204, 206.205, 206.21, 206.215, 206.22, 206.23, 206.24, 206.25, 206.27, 206.28, ~~206.405, 206.406,~~ 206.41, 206.413, 206.43, 206.44, 206.48, 206.485, 206.49, 206.56, 206.59, 206.606, 206.608, and 206.61 of part I of this chapter and ss. 206.86, 206.872, 206.874, 206.8745, 206.88, 206.90, and 206.93 of part II of this chapter shall, as far as lawful or practicable, be applicable to the tax levied and imposed and to the collection thereof as if fully set out in this part. However, any provision of any such section does not apply if it conflicts with any provision of this part.

Section 25. Section 1 of chapter 2007-339, section 13 of chapter 2008-173, section 6 of chapter 2009-131, subsection (2) of section 8 and section 24 of chapter 2010-138, section 6 of


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chapter 2010-149, section 7 of chapter 2010-166, section 35 of chapter 2011-76, section 4 of chapter 2011-93, section 3 of chapter 2011-229, section 25 of chapter 2012-32, and section 3 of chapter 2013-46, Laws of Florida, are repealed.

Section 26. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1320
INTRODUCER:	Senator Stargel
SUBJECT:	Tax Administration
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Favorable**
2.	Gross	Diez-Arguelles	AFT	**Recommend: Fav/CS**
3.	Gross	Hansen	AP	**Pre-meeting**

I. Summary:

SB 1320 amends various statutes relating to the administration of taxes. The bill contains recommendations made by the Department of Revenue (Department) and approved by the Cabinet which are designed to reduce the burden on taxpayers.

The bill eliminates:

- The fees charged for sales and use tax registration; fuel and pollutants dealers licensing; perchloroethylene registration; dry cleaning tax registration; and fuel tax refunds;
- The requirement that circuit court judges report to the Department the names of decedents and estates in probate unless the Department is a creditor of the estate; and
- The requirement that vending machine operators post a notice stating that machines without a posted notice may be reported using a toll-free number and that someone reporting noncompliance may be eligible for a reward, and the $250 associated penalty for not posting the notice.

Additionally, the bill:

- Allows a tax collection service provider to waive a reemployment tax penalty imposed for failure to file certain quarterly reports electronically if the tax collection service provider finds a penalty to be inequitable;
- Extends due dates for annual filings and installment payments when the due date falls on a weekend or a holiday; and
- Provides specific guidelines for the notification, adoption, and expiration of local ordinances imposing a tax on motor and diesel fuel prior to July 2002.

The Revenue Estimating Conference estimates this bill will reduce General Revenue Fund receipts by $100,000 in Fiscal Year 2017-2018 and $200,000 annually thereafter.[1]

This act takes effect upon becoming a law, while most the fee eliminations and vending machine notice provisions proposed in the bill take effect January 1, 2018.

II. Present Situation:

The present situation for each issue is explained below in the Effect of Proposed Changes section.

III. Effect of Proposed Changes:

Sections 1, 22, 23. Elimination of Reporting Requirements

Present Situation: Section 198.30, F.S., requires circuit court judges to report the names of decedents and other information on estates in probate to both the Department and the Agency for Health Care Administration (AHCA). In addition, personal representatives are required to provide certain information to the Department and AHCA pursuant to s. 733.2121(3), F.S. Due to estate and intangible tax law changes, the Department no longer needs the information circuit court judges provide and, in most circumstances, does not need the information supplied by personal representatives.[2]

Proposed Change: The bill amends s. 198.30, F.S., to eliminate the requirement to provide information to the Department. Therefore, this information will be provided only to the AHCA. Additionally, s. 733.2121, F.S., is amended to require a notice of creditors to be served on the Department only when the Department is a creditor of the estate.

Sections 2, 3, 4, 5, 6, 7, 9, 10, 11, and 24. Fuel and Pollutants License Fee Elimination

Present Situation: Florida law imposes a $30 license tax on persons applying for an annual fuel or pollutants license and a $5 annual fee to obtain a license as a natural gas fuel retailer.[3] The Department issues the taxpayer a receipt, which must be posted on display in public view. All money derived from the license taxes pursuant to ss. 206.02, 206.021, 206.022, and 206.404, F.S., must be paid into the State Treasury to the credit of the General Revenue Fund.[4]

Proposed Change: The bill eliminates the $30 annual license tax required for a fuel or pollutants license as well as the $5 annual fee to obtain a natural gas fuel license. Additionally, s. 206.405, F.S., the receipt for payment of the license tax, and s. 206.406, F.S., the disposition of license tax funds, are repealed. The bill amends s. 206.998, F.S., to conform to the repealed sections.

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[1] Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference, Tax Administration,* (Jan. 1, 2017), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page1-10.pdf (last visited April 10, 2017).
[2] Department of Revenue, *Department of Revenue 2017 Legislative Concepts,* (Sept. 09, 2016) (on file with the Senate Appropriations Subcommittee on Finance and Tax).
[3] *See* ch. 206, F.S.
[4] Section 206.406, F.S.

These sections are effective January 1, 2018.

Section 8. Fuel Tax Refund Fee Elimination

Present Situation: Florida law allows certain taxpayers to obtain quarterly refunds of a portion of the tax paid on fuel purchases.[5] These taxpayers must purchase the fuel for use in agriculture, commercial fishing, school buses, mass public transportation, or another authorized purpose.[6] The Department is required to deduct a $2 fee from each of these quarterly tax refunds, which is deposited into the General Revenue Fund.[7]

Proposed Change: The bill eliminates the $2 deduction from the quarterly fuel tax refunds made to these taxpayers.

This section is effective January 1, 2018.

Section 12. Elimination of Vending Machine Notice Requirement

Present Situation: Sales tax is due on the sale of food, beverages, and most items purchased through vending machines in Florida. Vending machine owners must display a notice on each vending machine which provides that machines without a posted notice may be reported using a toll-free number and that a person who reports noncompliance may be eligible for a reward. Florida law imposes a $250 penalty for each vending machine that does not display the notice.[8]

Proposed Change: The bill eliminates the required notice and associated penalty.

This section is effective January 1, 2018.

Sections 13 and 14. Sales and Use Tax Registration Fee Elimination

Present Situation: Florida law imposes a $5 fee on each business location that registers with the Department to collect, report, and remit sales and use tax. However, the $5 registration fee is waived if a business applies online through the Department's online registration process.[9] Section 212.0596, F.S., provides that DOR may establish procedures to provide for the waiver of registration fees from unregistered persons who make mail order purchases for which tax is required to be remitted.

Proposed Change: The bill eliminates the $5 application fee.

These sections are effective January 1, 2018.

[5] Section 206.41(5), F.S.
[6] Section 206.41(4), F.S.
[7] Section 206.41(5)(c)2., F.S.
[8] Section 212.0515, F.S.
[9] Section 212.18

Sections 15 and 16. Ninth-cent and Local Option Dates

Present Situation: Chapter 336, F.S., provides clear direction on the administration of rate changes for ninth-cent and local option fuel taxes imposed after July 1, 2002. For taxes imposed prior to July 2002, however, the statutes do not clearly identify adoption dates for ordinances or the length of time the adopted ordinance will remain in effect.

Proposed Change: The bill provides specific guidelines and clarification for the notification, adoption, and expiration of the ninth-cent fuel taxes imposed prior to July 2002. For those tax levies, any re-imposition would be required to be levied before July 1 to allow the Department time to make any necessary changes to distribution programs.

Section 17. Dry Cleaning Tax Registration Fee Elimination

Present Situation: Dry cleaning facilities are required to register with the Department and pay a $30 fee.[10] If a facility registers electronically, the Department waives the $30 fee as authorized by statute. The majority of these registrations are electronic and no fee is charged.[11]

Proposed Change: The bill eliminates the $30 registration fee for all registrations.

This section is effective on January 1, 2018.

Section 18. Perchloroethylene Registration Fee Elimination

Present Situation: Any person producing, importing, or selling perchloroethylene (perc) is required to register with the Department and pay a $30 fee.[12] Additionally, the person must also register for a pollutants license that requires a $30 license tax. The Department has allowed perc registrants to designate their perc registration on the pollutants registration and has not required a separate application and fee for a person dealing in perc.[13]

Present Change: The bill repeals the $30 perc registration fee.

Sections 19 and 20. Extension of Annual and Installment Due Dates

Present Situation: Due dates for reemployment tax installment payments and annual filings are provided for by statute and do not allow for additional time when the due dates fall on a Saturday, Sunday, or holiday. Quarterly filing due dates are provided for by rule and have provisions allowing later due dates when the date falls on a weekend or holiday.[14]

Proposed Change: The bill allows for annual filings and installment payments to be submitted the next day that is not a Saturday, Sunday, or holiday or any other day when the United States Postal Service is closed.

[10] Section 376.70, F.S.
[11] *See supra* note 2.
[12] Section 376.75, F.S.
[13] *See supra* note 2.
[14] Sections 443.131 and 443.141, F.S.

Section 21. Reemployment Tax Penalty Waiver

Present Situation: Florida law requires certain employers to file their Employers Quarterly Report electronically.[15] When employers fail to file electronically as required, current law imposes a penalty. The tax collection service provider (the department) has no flexibility to waive the penalty.

Proposed Change: The bill allows a tax collection service provider (the department) to waive the penalty imposed for a failure to file electronically if the tax collection service provider finds a penalty to be inequitable. Grounds for inequity include the death or serious illness of the person who prepares and files the report, destructions of the business records by fire or another casualty, or unscheduled and unavoidable computer downtime.

Section 25. Effective Date

The bill takes effect upon becoming a law, except as otherwise expressly provided.

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 Revenue Estimating Conference estimates this bill will reduce General Revenue Fund receipts by $100,000 in Fiscal Year 2017-2018 and $200,000 annually thereafter.[16]

B. Private Sector Impact:

The repeal of various licensing and registration fees will reduce costs businesses pay and reduce the administrative costs of completing the paperwork associated with the fees.

[15] Section 443.163, F.S.
[16] *See supra* note 1.

C. Government Sector Impact:

The Department of Revenue expects an insignificant operational impact from the provisions of this bill.[17]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 198.30, 206.02, 206.021, 206.022, 206.03, 206.045, 206.41, 206.9943, 206.9952, 206.998, 206.9865, 212.0515, 212.0596, 212.18, 336.021, 336.025, 376.70, 376.75, 443.131, 443.141, 443.163, and 733.2121.

This bill reenacts section 733.701 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 206.405 and 206.406.

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.

[17] Department of Revenue, *2017 Legislative Bill Analysis* (March 7, 2017) (on file with the Senate Judiciary Committee).

By Senator Stargel

22-00963A-17 20171320__

A bill to be entitled

An act relating to tax administration; amending s. 198.30, F.S.; deleting a requirement for circuit judges to monthly report certain information to the Department of Revenue relating to the estates of certain decedents; amending s. 206.02, F.S.; deleting requirements to pay license taxes for a terminal supplier license, an importer, exporter, or blender of motor fuels license, or a wholesaler of motor fuel license; conforming a provision to changes made by the act; amending s. 206.021, F.S.; deleting a requirement to pay license taxes for a carrier license; amending s. 206.022, F.S.; deleting a requirement to pay license taxes for a terminal operator license; amending s. 206.03, F.S.; conforming a provision to changes made by the act; amending s. 206.045, F.S.; conforming a provision to changes made by the act; repealing ss. 206.405 and 206.406, F.S., relating to receipt for payment of license taxes and disposition of license tax funds, respectively; amending s. 206.41, F.S.; deleting a requirement for the department to deduct a specified fee from certain motor fuel refund claims; amending s. 206.9943, F.S.; deleting a requirement to pay license fees for a pollutant tax license; amending s. 206.9952, F.S.; deleting a requirement to pay license fees for a natural gas fuel retailer license; amending s. 206.9865, F.S.; deleting a requirement to pay application fees for an aviation fuel tax license for

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commercial air carriers; amending s. 212.0515, F.S.; deleting a requirement for vending machine operators to post a specified notice on vending machines; deleting a provision requiring the department to pay an informant certain rewards for reporting vending machines without the notice; conforming provisions to changes made by the act; amending s. 212.0596, F.S.; deleting an authorization for procedures that waive registration fees in relation to the use tax on mail order purchases by certain persons; amending s. 212.18, F.S.; deleting a requirement for certificates of registration fees for certain dealers in relation to the sales and use tax; conforming provisions to changes made by the act; amending s. 336.021, F.S.; specifying a condition for the reimposition of ninth-cent fuel taxes on motor and diesel fuels by a county; amending s. 336.025, F.S.; specifying a condition for the reimposition of local option fuel taxes on motor and diesel fuels by a county; providing construction relating to requirements on a decision to rescind a tax; amending s. 376.70, F.S.; deleting a requirement for drycleaning or dry drop-off facilities to pay registration fees to the department; amending s. 376.75, F.S.; deleting a requirement to pay registration fees for certain persons producing, importing, selling, or using perchloroethylene; amending s. 443.131, F.S.; revising a deadline for employers of employees performing domestic services to annually report wages and pay certain contributions

under the Reemployment Assistance Program Law; defining the term "holiday"; amending s. 443.141, F.S.; specifying a due date of certain employer contributions if such date falls on a weekend or holiday; defining the term "holiday"; conforming cross-references; amending s. 443.163, F.S.; deleting a form name; authorizing reemployment assistance tax collection service providers to waive a certain penalty under certain circumstances; amending s. 733.2121, F.S.; providing that a personal representative may serve a notice to creditors on the department only under certain circumstances; deleting a provision providing construction; reenacting s. 733.701, F.S., relating to notifying creditors, to incorporate the amendment made to s. 733.2121, F.S., in a reference thereto; amending s. 206.998, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 198.30, Florida Statutes, is amended to read:

198.30 Circuit judge to report names of decedents, etc.—Each circuit judge of this state shall, on or before the 10th day of every month, notify the Agency for Health Care Administration ~~department~~ of the names of all decedents; the names and addresses of the respective personal representatives, administrators, or curators appointed; the amount of the bonds,

if any, required by the court; and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before the circuit judge or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding month; and such report shall contain any other information that ~~which~~ the circuit judge may have concerning the estates of such decedents. ~~In addition, a copy of this report shall be provided to the Agency for Health Care Administration.~~ A circuit judge shall also furnish forthwith such further information, from the records and files of the circuit court in regard to such estates, as the department may from time to time require.

Section 2. Effective January 1, 2018, subsections (2), (3), and (4), paragraph (a) of subsection (7), and paragraph (b) of subsection (8) of section 206.02, Florida Statutes, are amended to read:

206.02 Application for license; temporary license; terminal suppliers, importers, exporters, blenders, biodiesel manufacturers, and wholesalers.—

(2) To procure a terminal supplier license, a person shall file with the department an application under oath, and in such form as the department may prescribe, setting forth:

(a) The name under which the person will transact business within the state and that person's registration number under s. 4101 of the Internal Revenue Code.

(b) The location, with street number address, of his or her principal office or place of business and the location where records will be made available for inspection.

(c) The name and complete residence address of the owner or the names and addresses of the partners, if such person is a partnership, or of the principal officers, if such person is a corporation or association; and, if such person is a corporation organized under the laws of another state, territory, or country, he or she shall also indicate the state, territory, or country where the corporation is organized and the date the corporation was registered with the Department of State as a foreign corporation authorized to transact business in the state.

~~The application shall require a $30 license tax.~~ Each license must ~~shall~~ be renewed annually through application~~, including an annual $30 license tax~~.

(3) To procure an importer, exporter, or blender of motor fuels license, a person shall file with the department an application under oath, and in such form as the department may prescribe, setting forth:

(a) The name under which the person will transact business within the state.

(b) The location, with street number address, of his or her principal office or place of business and the location where records will be made available for inspection.

(c) The name and complete residence address of the owner or the names and addresses of the partners, if such person is a partnership, or of the principal officers, if such person is a corporation or association; and, if such person is a corporation organized under the laws of another state, territory, or country, he or she shall also indicate the state, territory, or

country where the corporation is organized and the date the corporation was registered with the Department of State as a foreign corporation authorized to transact business in the state.

~~The application shall require a $30 license tax.~~ Each license must ~~shall~~ be renewed annually through application~~, including an annual $30 license tax~~.

(4) To procure a wholesaler of motor fuel license, a person shall file with the department an application under oath and in such form as the department may prescribe, setting forth:

(a) The name under which the person will transact business within the state.

(b) The location, with street number address, of his or her principal office or place of business within this state and the location where records will be made available for inspection.

(c) The name and complete residence address of the owner or the names and addresses of the partners, if such person is a partnership, or of the principal officers, if such person is a corporation or association; and, if such person is a corporation organized under the laws of another state, territory, or country, he or she shall also indicate the state, territory, or country where the corporation is organized and the date the corporation was registered with the Department of State as a foreign corporation authorized to transact business in the state.

~~The application shall require a $30 license tax.~~ Each license must ~~shall~~ be renewed annually through application~~, including an~~

~~annual $30 license fee~~.

(7)(a) If all applicants for a license hold a current license in good standing of the same type and kind, the department shall issue a temporary license upon the filing of a completed application~~, payment of all fees,~~ and the posting of adequate bond. A temporary license shall automatically expire 90 days after its effective date or, prior to the expiration of 90 days or the period of any extension, upon issuance of a permanent license or of a notice of intent to deny a permanent license. A temporary license may be extended once for a period not to exceed 60 days, upon written request of the applicant, subject to the restrictions imposed by this subsection.

(8)

(b) Notwithstanding the provisions of this chapter requiring a license ~~tax~~ and a bond or criminal background check, the department may issue a temporary license as an importer or exporter to a person who holds a valid Florida wholesaler license or to a person who is an unlicensed dealer. A license may be issued under this subsection only to a business that has a physical location in this state and holds a valid Florida sales and use tax certificate of registration or that holds a valid fuel license issued by another state.

Section 3. Effective January 1, 2018, subsection (3) and paragraph (b) of subsection (5) of section 206.021, Florida Statutes, are amended to read:

206.021 Application for license; carriers.—

(3) ~~The application shall require a $30 license tax.~~ Each license must ~~shall~~ be renewed annually through application~~, including an annual $30 license tax~~.

(5)

(b) Notwithstanding the provisions of this chapter requiring a license ~~tax~~ and a bond or criminal background check, the department may issue a temporary license as a carrier to a person who holds a valid Florida wholesaler, importer, exporter, or blender license or to a person who is an unlicensed dealer. A license may be issued under this subsection only to a business that has a physical location in this state and holds a valid Florida sales and use tax certificate of registration or that holds a valid fuel license issued by another state.

Section 4. Effective January 1, 2018, subsection (2) of section 206.022, Florida Statutes, is amended to read:

206.022 Application for license; terminal operators.—

(2) ~~The application shall require a $30 license tax.~~ Each license shall be renewed annually through application~~, including an annual $30 license tax~~.

Section 5. Effective January 1, 2018, subsection (1) of section 206.03, Florida Statutes, is amended to read:

206.03 Licensing of terminal suppliers, importers, exporters, and wholesalers.—

(1) The application in proper form having been accepted for filing~~, the filing fee paid,~~ and the bond accepted and approved, except as provided in s. 206.05(1), the department shall issue to such person a license to transact business in the state, subject to cancellation of such license as provided by law.

Section 6. Effective January 1, 2018, section 206.045, Florida Statutes, is amended to read:

206.045 Licensing period~~; cost for license issuance~~.—Beginning January 1, 1998, the licensing period under this

chapter shall be a calendar year, or any part thereof. ~~The cost of any such license issued pursuant to this chapter shall be $30.~~

Section 7. Effective January 1, 2018, ss. 206.405 and 206.406, Florida Statutes, are repealed.

Section 8. Effective January 1, 2018, paragraph (c) of subsection (5) of section 206.41, Florida Statutes, is amended to read:

206.41 State taxes imposed on motor fuel.—

(5)

(c)1. No refund may be authorized unless a sworn application therefor containing such information as the department may determine is filed with the department not later than the last day of the month following the quarter for which the refund is claimed. However, when a justified excuse for late filing is presented to the department and the last preceding claim was filed on time, the deadline for filing may be extended an additional month. No refund will be authorized unless the amount due is for $5 or more for any refund period and unless application is made upon forms prescribed by the department.

2. Claims made for refunds provided pursuant to subsection (4) shall be paid quarterly. ~~The department shall deduct a fee of $2 for each claim, which fee shall be deposited in the General Revenue Fund.~~

Section 9. Effective January 1, 2018, subsection (3) of section 206.9943, Florida Statutes, is amended to read:

206.9943 Pollutant tax license.—

(3) The license must be renewed annually~~, and the fee for original application or renewal is $30~~.

Section 10. Effective January 1, 2018, subsection (9) of section 206.9952, Florida Statutes, is amended to read:

206.9952 Application for license as a natural gas fuel retailer.—

(9) ~~The license application requires a license fee of $5.~~ Each license shall be renewed annually by submitting a reapplication ~~and the license fee to the department~~. ~~The license fee shall be paid to the department for deposit into the General Revenue Fund.~~

Section 11. Effective January 1, 2018, subsection (3) of section 206.9865, Florida Statutes, is amended to read:

206.9865 Commercial air carriers; registration; reporting.—

(3) The application must be renewed annually ~~and the fee for application or renewal is $30~~.

Section 12. Effective January 1, 2018, subsections (3) and (4) and present subsection (7) of section 212.0515, Florida Statutes, are amended to read:

212.0515 Sales from vending machines; sales to vending machine operators; special provisions; registration; penalties.—

(3)~~(a)~~ An operator of a vending machine may not operate or cause to be operated in this state any vending machine until the operator has registered with the department and~~,~~ has obtained a separate registration certificate for each county in which such machines are located~~, and has affixed a notice to each vending machine selling food or beverages~~. ~~The notice must be conspicuously displayed on the vending machine when it is being operated in this state and shall contain the following language in conspicuous type: NOTICE TO CUSTOMER: FLORIDA LAW REQUIRES THIS NOTICE TO BE POSTED ON ALL FOOD AND BEVERAGE VENDING~~

~~MACHINES. REPORT ANY MACHINE WITHOUT A NOTICE TO (TOLL-FREE NUMBER). YOU MAY BE ELIGIBLE FOR A CASH REWARD. DO NOT USE THIS NUMBER TO REPORT PROBLEMS WITH THE VENDING MACHINE SUCH AS LOST MONEY OR OUT-OF-DATE PRODUCTS.~~

~~(b)~~ The department shall establish a toll-free number to report any violations of this section. ~~Upon a determination that a violation has occurred, the department shall pay the informant a reward of up to 10 percent of previously unpaid taxes recovered as a result of the information provided. A person who receives information concerning a violation of this section from an employee as specified in s. 213.30 is not eligible for a cash reward.~~

~~(4) A penalty of $250 per machine is imposed on an operator who fails to properly obtain and display the required notice on any machine. Penalties accrue interest as provided for delinquent taxes under this chapter and apply in addition to all other applicable taxes, interest, and penalties.~~

(6)~~(7)~~ The department may adopt rules necessary to administer ~~the provisions of~~ this section ~~and may establish a schedule for phasing in the requirement that existing notices be replaced with revised notices displayed on vending machines~~.

Section 13. Effective January 1, 2018, subsection (7) of section 212.0596, Florida Statutes, is amended to read:

212.0596 Taxation of mail order sales.—

(7) The department may establish by rule procedures for collecting the use tax from unregistered persons who but for their mail order purchases would not be required to remit sales or use tax directly to the department. The procedures may provide for waiver of registration ~~and registration fees~~,

provisions for irregular remittance of tax, elimination of the collection allowance, and nonapplication of local option surtaxes.

Section 14. Effective January 1, 2018, paragraphs (a) and (c) of subsection (3) of section 212.18, Florida Statutes, are amended to read:

212.18 Administration of law; registration of dealers; rules.—

(3)(a) A person desiring to engage in or conduct business in this state as a dealer, or to lease, rent, or let or grant licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, or tourist or trailer camps that are subject to tax under s. 212.03, or to lease, rent, or let or grant licenses in real property, and a person who sells or receives anything of value by way of admissions, must file with the department an application for a certificate of registration for each place of business. The application must include the names of the persons who have interests in such business and their residences, the address of the business, and other data reasonably required by the department. However, owners and operators of vending machines or newspaper rack machines are required to obtain only one certificate of registration for each county in which such machines are located. The department, by rule, may authorize a dealer that uses independent sellers to sell its merchandise to remit tax on the retail sales price charged to the ultimate consumer in lieu of having the independent seller register as a dealer and remit the tax. The department may appoint the county tax collector as the department’s agent to accept applications

for registrations. The application must be submitted to the department before the person, firm, copartnership, or corporation may engage in such business~~, and it must be accompanied by a registration fee of $5~~. ~~However, a registration fee is not required to accompany an application to engage in or conduct business to make mail order sales. The department may waive the registration fee for applications submitted through the department's Internet registration process.~~

(c)1. A person who engages in acts requiring a certificate of registration under this subsection and who fails or refuses to register commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Such acts are subject to injunctive proceedings as provided by law. A person who engages in acts requiring a certificate of registration and who fails or refuses to register is also subject to a $100 initial registration fee ~~in lieu of the $5 registration fee required by paragraph (a)~~. However, the department may waive the ~~increase in the~~ registration fee if it finds that the failure to register was due to reasonable cause and not to willful negligence, willful neglect, or fraud.

2.a. A person who willfully fails to register after the department provides notice of the duty to register as a dealer commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. The department shall provide written notice of the duty to register to the person by personal service or by sending notice by registered mail to the person's last known address. The department may provide written notice by both methods described in this sub-subparagraph.

Section 15. Subsection (5) of section 336.021, Florida Statutes, is amended to read:

336.021 County transportation system; levy of ninth-cent fuel tax on motor fuel and diesel fuel.—

(5) All impositions of the tax shall be levied before October 1 of each year to be effective January 1 of the following year. However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be reimposed at the current authorized rate if the imposition of the tax is levied before July 1 and is ~~to be~~ effective September 1 of the year of expiration. All impositions shall be required to end on December 31 of a year. A decision to rescind the tax shall not take effect on any date other than December 31 and shall require a minimum of 60 days' notice to the department of such decision.

Section 16. Paragraphs (a) and (b) of subsection (1) and paragraph (a) of subsection (5) of section 336.025, Florida Statutes, are amended to read:

336.025 County transportation system; levy of local option fuel tax on motor fuel and diesel fuel.—

(1)(a) In addition to other taxes allowed by law, there may be levied as provided in ss. 206.41(1)(e) and 206.87(1)(c) a 1-cent, 2-cent, 3-cent, 4-cent, 5-cent, or 6-cent local option fuel tax upon every gallon of motor fuel and diesel fuel sold in a county and taxed under the provisions of part I or part II of chapter 206.

1. All impositions and rate changes of the tax shall be levied before October 1 to be effective January 1 of the following year for a period not to exceed 30 years, and the

applicable method of distribution shall be established pursuant to subsection (3) or subsection (4). However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be reimposed at the current authorized rate if the imposition of the tax is levied before July 1 and is effective September 1 of the year of expiration. Upon expiration, the tax may be relevied provided that a redetermination of the method of distribution is made as provided in this section.

2. County and municipal governments shall utilize moneys received pursuant to this paragraph only for transportation expenditures.

3. Any tax levied pursuant to this paragraph may be extended on a majority vote of the governing body of the county. A redetermination of the method of distribution shall be established pursuant to subsection (3) or subsection (4), if, after July 1, 1986, the tax is extended or the tax rate changed, for the period of extension or for the additional tax.

(b) In addition to other taxes allowed by law, there may be levied as provided in s. 206.41(1)(e) a 1-cent, 2-cent, 3-cent, 4-cent, or 5-cent local option fuel tax upon every gallon of motor fuel sold in a county and taxed under the provisions of part I of chapter 206. The tax shall be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body of the county or by referendum.

1. All impositions and rate changes of the tax shall be levied before October 1, to be effective January 1 of the following year. However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may

be reimposed at the current authorized rate if the imposition of the tax is levied before July 1 and is effective September 1 of the year of expiration.

2. The county may, prior to levy of the tax, establish by interlocal agreement with one or more municipalities located therein, representing a majority of the population of the incorporated area within the county, a distribution formula for dividing the entire proceeds of the tax among county government and all eligible municipalities within the county. If no interlocal agreement is adopted before the effective date of the tax, tax revenues shall be distributed pursuant to the provisions of subsection (4). If no interlocal agreement exists, a new interlocal agreement may be established prior to June 1 of any year pursuant to this subparagraph. However, any interlocal agreement agreed to under this subparagraph after the initial levy of the tax or change in the tax rate authorized in this section shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds which are backed by taxes authorized by this paragraph, and the amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of establishment of the new interlocal agreement.

3. County and municipal governments shall use moneys received pursuant to this paragraph for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan or for

expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments. For purposes of this paragraph, expenditures for the construction of new roads, the reconstruction or resurfacing of existing paved roads, or the paving of existing graded roads shall be deemed to increase capacity and such projects shall be included in the capital improvements element of an adopted comprehensive plan. Expenditures for purposes of this paragraph shall not include routine maintenance of roads.

(5)(a) By October 1 of each year, the county shall notify the Department of Revenue of the rate of the taxes levied pursuant to paragraphs (1)(a) and (b), and of its decision to rescind or change the rate of a tax, if applicable, and shall provide the department with a certified copy of the interlocal agreement established under subparagraph (1)(b)2. or subparagraph (3)(a)1. with distribution proportions established by such agreement or pursuant to subsection (4), if applicable. A decision to rescind a tax may not take effect on any date other than December 31, regardless of when the tax was originally imposed, and requires a minimum of 60 days' notice to the Department of Revenue of such decision.

Section 17. Effective January 1, 2018, subsection (2) of section 376.70, Florida Statutes, is amended to read:

376.70 Tax on gross receipts of drycleaning facilities.—

(2) Each drycleaning facility or dry drop-off facility imposing a charge for the drycleaning or laundering of clothing or other fabrics is required to register with the Department of Revenue and become licensed for the purposes of this section.

The owner or operator of the facility shall register the facility with the Department of Revenue. Drycleaning facilities or dry drop-off facilities operating at more than one location are only required to have a single registration. ~~The fee for registration is $30. The owner or operator of the facility shall pay the registration fee to the Department of Revenue. The department may waive the registration fee for applications submitted through the department's Internet registration process.~~

Section 18. Subsection (2) of section 376.75, Florida Statutes, is amended to read:

376.75 Tax on production or importation of perchloroethylene.—

(2) Any person producing in, importing into, or causing to be imported into, or selling in, this state perchloroethylene must register with the Department of Revenue and become licensed for the purposes of remitting the tax pursuant to, or providing information required by, this section. Such person must register as a seller of perchloroethylene, a user of perchloroethylene in drycleaning facilities, or a user of perchloroethylene for purposes other than drycleaning. Persons operating at more than one location are only required to have a single registration. ~~The fee for registration is $30.~~ Failure to timely register is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 19. Subsection (1) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(1) PAYMENT OF CONTRIBUTIONS.—Contributions accrue and are

payable by each employer for each calendar quarter he or she is subject to this chapter for wages paid during each calendar quarter for employment. Contributions are due and payable by each employer to the tax collection service provider, in accordance with the rules adopted by the Department of Economic Opportunity or the state agency providing tax collection services. This subsection does not prohibit the tax collection service provider from allowing, at the request of the employer, employers of employees performing domestic services, as defined in s. 443.1216(6), to pay contributions or report wages at intervals other than quarterly when the nonquarterly payment or reporting assists the service provider and when nonquarterly payment and reporting is authorized under federal law. Employers of employees performing domestic services may report wages and pay contributions annually, with a due date of no later than January 31, unless that day is a Saturday, Sunday, or holiday, in which event the due date is the next day that is not a Saturday, Sunday, or holiday. For purposes of this subsection, the term "holiday" means a day designated under s. 110.117(1) and (2) and any other day when the offices of the United States Postal Service are closed ~~January 1 and a delinquency date of February 1~~. To qualify for this election, the employer must employ only employees performing domestic services, be eligible for a variation from the standard rate computed under subsection (3), apply to this program no later than December 1 of the preceding calendar year, and agree to provide the department or its tax collection service provider with any special reports that are requested, including copies of all federal employment tax forms. An employer who fails to timely furnish any wage

information required by the department or its tax collection service provider loses the privilege to participate in this program, effective the calendar quarter immediately after the calendar quarter the failure occurred. The employer may reapply for annual reporting when a complete calendar year elapses after the employer's disqualification if the employer timely furnished any requested wage information during the period in which annual reporting was denied. An employer may not deduct contributions, interests, penalties, fines, or fees required under this chapter from any part of the wages of his or her employees. A fractional part of a cent less than one-half cent shall be disregarded from the payment of contributions, but a fractional part of at least one-half cent shall be increased to 1 cent.

Section 20. Paragraph (d) of subsection (1) of section 443.141, Florida Statutes, is amended to read:

443.141 Collection of contributions and reimbursements.—

(1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT, ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

(d) *Payments for contributions.*—For an annual administrative fee not to exceed $5, a contributing employer may pay its quarterly contributions due for wages paid in the first three quarters of each year in equal installments if those contributions are paid as follows:

1. For contributions due for wages paid in the first quarter of each year, one-fourth of the contributions due must be paid on or before April 30, one-fourth must be paid on or before July 31, one-fourth must be paid on or before October 31, and one-fourth must be paid on or before December 31.

2. In addition to the payments specified in subparagraph

1., for contributions due for wages paid in the second quarter of each year, one-third of the contributions due must be paid on or before July 31, one-third must be paid on or before October 31, and one-third must be paid on or before December 31.

3. In addition to the payments specified in subparagraphs 1. and 2., for contributions due for wages paid in the third quarter of each year, one-half of the contributions due must be paid on or before October 31, and one-half must be paid on or before December 31.

4. If any of the due dates in this paragraph falls on a Saturday, Sunday, or holiday, the due date is the next day that is not a Saturday, Sunday, or holiday. For purposes of this paragraph, the term "holiday" means a day designated under s. 110.117(1) and (2) and any other day when the offices of the United States Postal Service are closed.

5.~~4.~~ The annual administrative fee assessed for electing to pay under the installment method shall be collected at the time the employer makes the first installment payment each year. The fee shall be segregated from the payment and deposited into the Operating Trust Fund of the Department of Revenue.

6.~~5.~~ Interest does not accrue on any contribution that becomes due for wages paid in the first three quarters of each year if the employer pays the contribution in accordance with subparagraphs 1.-5. ~~subparagraphs 1.-4.~~ Interest and fees continue to accrue on prior delinquent contributions and commence accruing on all contributions due for wages paid in the first three quarters of each year which are not paid in accordance with subparagraphs 1.-4. ~~subparagraphs 1.-3.~~ Penalties may be assessed in accordance with this chapter. The

contributions due for wages paid in the fourth quarter are not affected by this paragraph and are due and payable in accordance with this chapter.

Section 21. Section 443.163, Florida Statutes, is amended to read:

443.163 Electronic reporting and remitting of contributions and reimbursements.—

(1) An employer may file any report and remit any contributions or reimbursements required under this chapter by electronic means. The Department of Economic Opportunity or the state agency providing reemployment assistance tax collection services shall adopt rules prescribing the format and instructions necessary for electronically filing reports and remitting contributions and reimbursements to ensure a full collection of contributions and reimbursements due. The acceptable method of transfer, the method, form, and content of the electronic means, and the method, if any, by which the employer will be provided with an acknowledgment shall be prescribed by the department or its tax collection service provider. However, any employer who employed 10 or more employees in any quarter during the preceding state fiscal year must file the Employers Quarterly Reports ~~(UCT-6)~~ for the current calendar year and remit the contributions and reimbursements due by electronic means approved by the tax collection service provider. A person who prepared and reported for 100 or more employers in any quarter during the preceding state fiscal year must file the Employers Quarterly Reports ~~(UCT-6)~~ for each calendar quarter in the current calendar year, beginning with reports due for the second calendar quarter of

2003, by electronic means approved by the tax collection service provider.

(2)(a) An employer who is required by law to file an Employers Quarterly Report ~~(UCT-6)~~ by approved electronic means, but who files the report by a means other than approved electronic means, is liable for a penalty of $50 for that report and $1 for each employee. This penalty is in addition to any other penalty provided by this chapter. However, the penalty does not apply if the tax collection service provider waives the electronic filing requirement in advance. An employer who fails to remit contributions or reimbursements by approved electronic means as required by law is liable for a penalty of $50 for each remittance submitted by a means other than approved electronic means. This penalty is in addition to any other penalty provided by this chapter.

(b) A person who prepared and reported for 100 or more employers in any quarter during the preceding state fiscal year, but who fails to file an Employers Quarterly Report ~~(UCT-6)~~ for each calendar quarter in the current calendar year by approved electronic means, is liable for a penalty of $50 for that report and $1 for each employee. This penalty is in addition to any other penalty provided by this chapter. However, the penalty does not apply if the tax collection service provider waives the electronic filing requirement in advance.

(3) The tax collection service provider may waive the requirement to file an Employers Quarterly Report ~~(UCT-6)~~ by electronic means for employers that are unable to comply despite good faith efforts or due to circumstances beyond the employer's reasonable control.

(a) As prescribed by the Department of Economic Opportunity or its tax collection service provider, grounds for approving the waiver include, but are not limited to, circumstances in which the employer does not:

1. Currently file information or data electronically with any business or government agency; or

2. Have a compatible computer that meets or exceeds the standards prescribed by the department or its tax collection service provider.

(b) The tax collection service provider shall accept other reasons for requesting a waiver from the requirement to submit the Employers Quarterly Report ~~(UCT-6)~~ by electronic means, including, but not limited to:

1. That the employer needs additional time to program his or her computer;

2. That complying with this requirement causes the employer financial hardship; or

3. That complying with this requirement conflicts with the employer's business procedures.

(c) The department or the state agency providing reemployment assistance tax collection services may establish by rule the length of time a waiver is valid and may determine whether subsequent waivers will be authorized, based on this subsection.

(4) As used in this section, the term "electronic means" includes, but is not limited to, electronic data interchange; electronic funds transfer; and use of the Internet, telephone, or other technology specified by the Department of Economic Opportunity or its tax collection service provider.

(5) The tax collection service provider may waive the penalty imposed by this section if a written request for a waiver is filed which establishes that imposition would be inequitable. Examples of inequity include, but are not limited to, situations where the failure to electronically file was caused by one of the following factors:

(a) Death or serious illness of the person responsible for the preparation and filing of the report.

(b) Destruction of the business records by fire or other casualty.

(c) Unscheduled and unavoidable computer downtime.

Section 22. Paragraph (e) of subsection (3) of section 733.2121, Florida Statutes, is amended to read:

733.2121 Notice to creditors; filing of claims.—

(3)

(e) The personal representative may serve a notice to creditors on the Department of Revenue only when the Department of Revenue is determined to be a creditor under paragraph (a) ~~If the Department of Revenue has not previously been served with a copy of the notice to creditors, then service of the inventory on the Department of Revenue shall be the equivalent of service of a copy of the notice to creditors~~.

Section 23. For the purpose of incorporating the amendment made by this act to section 733.2121, Florida Statutes, in a reference thereto, section 733.701, Florida Statutes, is reenacted to read:

733.701 Notifying creditors.—Unless creditors' claims are otherwise barred by s. 733.710, every personal representative shall cause notice to creditors to be published and served under

s. 733.2121.

Section 24. Effective January 1, 2018, section 206.998, Florida Statutes, is amended to read:

206.998 Applicability of specified sections of parts I and II.—The provisions of ss. 206.01, 206.02, 206.025, 206.026, 206.027, 206.028, 206.03, 206.05, 206.055, 206.06, 206.07, 206.075, 206.09, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15, 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204, 206.205, 206.21, 206.215, 206.22, 206.23, 206.24, 206.25, 206.27, 206.28, ~~206.405, 206.406,~~ 206.41, 206.413, 206.43, 206.44, 206.48, 206.485, 206.49, 206.56, 206.59, 206.606, 206.608, and 206.61 of part I of this chapter and ss. 206.86, 206.872, 206.874, 206.8745, 206.88, 206.90, and 206.93 of part II of this chapter shall, as far as lawful or practicable, be applicable to the tax levied and imposed and to the collection thereof as if fully set out in this part. However, any provision of any such section does not apply if it conflicts with any provision of this part.

Section 25. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR KELLI STARGEL
22nd District

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 SB 1320, related to *Tax Administration*, be place on the next committee agenda.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

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

4/25/17
Meeting Date

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

SB 1320
Bill Number (if applicable)

106194
Amendment Barcode (if applicable)

Topic Tax Administration

Name Kevin Cabrera

Job Title Representative

Address 123 S. Adams St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 786-329-9080

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Mark Anthony Brands

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)

4/25/2017
Meeting Date

1320
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian P. Iths

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City *State* *Zip*

Email justree2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justree-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.

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/SB 1710 (613868)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Pre- K- 12 Education); and Senators Stargel and Grimsley
SUBJECT:	Education
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1710 designates the month of September as "American Founders' Month" and authorizes the Governor to issue a proclamation urging all civic, fraternal, and religious organizations and public and private educational institutions to recognize, observe, and celebrate the month. Specifically, the bill:

- Encourages all public schools to observe "American Founders' Month" with appropriate instruction and activities.
- Establishes civic literacy as a priority of Florida's K-20 education system.
- Requires the Just Read, Florida! Office to develop and provide access to sequenced, content-rich programming, instructional practices, and resources to increase students' core knowledge and literacy skills including student attainment of state standards for social studies, science, and the arts.
- Requires students initially entering a Florida College System institution or state university in 2018-2019 and thereafter, to demonstrate civic literacy through successful completion of a course or by achieving a passing score on an assessment adopted in rule by the State Board of Education or in regulation by the Board of Governors, as applicable.

The bill does not impact state revenues or expenditures.

The bill takes effect on July 1, 2017.

II. Present Situation:

Florida has established mechanisms to increase the civic awareness and engagement among students through civic-engagement skills in the curriculum standards for all subjects,[1] and specifically social studies;[2] a middle grades civics education course[3] and end-of-course assessment;[4] and the inclusion of such end-of-course assessment in the calculation of school grades.[5]

Priorities of the K-20 Education System

The mission of Florida's K-20 education system is to allow students to increase their proficiency by providing the opportunity to expand their knowledge and skills through rigorous and relevant learning opportunities.[6] As such, the priorities of Florida's K-20 education system include:[7]

- Demonstration that all students meet the expected academic standards consistently at all levels of their education.
- Learning and completion at all levels, so that all students demonstrate increased learning and completion at all levels, graduate from high school, and are prepared to enter postsecondary education without remediation.
- Alignment of standards and resources for every level of the K-20 education system.
- Improved educational leadership at all levels of K-20 education.
- Alignment of workforce education with skills required by the new global economy.
- Collaboration between parents, students, families, educational institutions, and communities as important to each individual student's success; the goals of Florida's K-20 education system are not guarantees that each individual student will succeed or that each individual school will perform at the level indicated in the goals.
- Comprehensive K-20 career and education planning to better prepare all students at every level for the transition from school to postsecondary education or work.

Patriotic Programs

District school boards are authorized to adopt rules that require patriotic programs in district schools that encourage respect for the United States government, the national anthem, and the flag.[8] The law also specifies procedures for the playing of the national anthem and recitation of the pledge of allegiance to the flag in public schools and at school-sponsored functions.[9] The

[1] Section 1003.41(1), F.S.
[2] Section 1003.41(2)(d), F.S.
[3] Section 1003.4156(1)(c), F.S. The one-semester civics education course must include the roles and responsibilities of federal, state, and local governments; the structures and functions of the legislative, executive, and judicial branches of government; and the meaning and significance of historic documents, such as the Articles of Confederation, the Declaration of Independence, and the Constitution of the United States. *Id.*
[4] Section 1008.22(3)(b)1., F.S.
[5] Section 1008.34(3)(b)1.d., F.S.
[6] Section 1000.03(4), F.S.
[7] *Id*. at (5).
[8] Section 1003.44(1), F.S.
[9] *Id.*

pledge must be recited at the beginning of the day in each public school in the state.[10] Students must be excused from reciting the pledge if his or her parent submits a written request.[11]

Postsecondary Requirements

Civics Instruction

Currently, there is not a state civics requirement for students attending a Florida public postsecondary institution.[12] Students in the Florida College System and State University System are offered opportunities to study civics through courses in their general education core curriculum, as well as in civics courses in specific programs of study.[13]

Florida law requires a student to complete at least one social science course as a part of the general education core degree requirement.[14] The courses available to complete this requirement are in:[15]

- American History;
- Anthropology;
- Macroeconomics;
- American Government;
- Psychology; and
- Sociology.

Of the social science courses taken in 2014-15, 45 percent were civics related.[16] Also, 17 percent of all university undergraduates, and 21 percent of all college students enrolled in college-credit courses took at least one civics-related course in 2014-2015.[17]

Degree Requirements

The following state-level requirements apply to students seeking an associate in arts or baccalaureate degree from a Florida public postsecondary institution:

- Completion of 36 semester hours of general education coursework in the areas of communication, humanities, mathematics, natural science, and social science.[18]

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[10] *Id.*
[11] *Id.*
[12] Office of Program Policy Analysis and Government Accountability, *OPPAGA Research on Postsecondary Civics Education*, at 8, presentation to the House of Representatives PreK-12 Quality Subcommittee (Feb. 15, 2017), *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2909&Session=2017&DocumentType=Meeting%20Packets&FileName=pkq%202-15-17.pdf.
[13] *Id.* at 10.
[14] Section 1007.25(3), F.S.
[15] Rule 6A-14.0303, F.A.C.
[16] Office of Program Policy Analysis and Government Accountability, *OPPAGA Research on Postsecondary Civics Education*, at 14, presentation to the House of Representatives PreK-12 Quality Subcommittee (Feb. 15, 2017), *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2909&Session=2017&DocumentType=Meeting%20Packets&FileName=pkq%202-15-17.pdf. Psychology was the most popular social science general education course.
[17] *Id.* at 11. These include American History, Government, and Economics.
[18] Section 1007.25, F.S. *See also* Rule 6A-10.024(2)(a) and (3)(a), F.A.C., Rule 6A-10.030(1) and (2), F.A.C., and BOG Regulation 6.017(1)(a).

- Beginning with students initially entering a Florida College System institution or state university in 2015-2016 and thereafter, complete at least one identified core course in each subject area as part of the general education course requirements.[19]
- Beginning with students initially entering a Florida College System institution or state university in 2014-2015 and thereafter, coursework for an associate in arts degree must include demonstration of competency in a foreign language.[20]
- Completion of six semester hours of English coursework, six semester hours of other coursework in which the student is required to demonstrate college-level writing skills through multiple assignments, and six semester hours of mathematics at the level of college algebra or higher.[21]
- For associate in arts degrees, students initially entering a Florida College System institution in 2013-2014 and thereafter, must indicate a baccalaureate degree program offered by an institution of interest by the time the student earns 30 semester hours.[22]
- For an associate in arts degree, completion of no more than 60 semester hours of college credit;[23] for a baccalaureate degree, completion of no more than 120 semester hours of college credit.[24]

Students in associate in science and associate in applied science degree programs must satisfactorily complete a planned program of instruction comprised of the established credit hour length[25] and complete fifteen semester credit hours of general education coursework.[26]

Just Read, Florida!

In 2001,[27] Governor Jeb Bush established Just Read, Florida! as a comprehensive and coordinated reading initiative intended to establish reading as a core value in this state. In 2006,[28] the Legislature created within the DOE the Just Read, Florida! Office. Among its duties, the Just Read, Florida! Office must:[29]

- Create multiple designations of effective reading instruction, with accompanying credentials, which encourage all teachers to integrate reading instruction into their content areas.
- Train K-12 teachers and school principals on effective content-area-specific reading strategies. For secondary teachers, emphasis must be on technical text.
- Provide parents with information and strategies for assisting their children in reading in the content area.

[19] Section 1007.25(3), F.S.
[20] Section 1007.25(7), F.S.
[21] Rule 6A-10.030, F.A.C. and BOG Regulation 6.017(1)(a)
[22] Section 1007.23(3), F.S. and 6A-10.024(4), F.A.C.
[23] Students must achieve a cumulative grade point average of 2.0. Rule 6A-10.024, F.A.C.
[24] 1007.25(7) and (8), F.S. See also Rule 6A-14.030(2), F.A.C., Rule 6A.10.024(3)(a), F.A.C., and BOG Regulation 6.017(1)(c). The 120 semester hour limit may be waived with prior approval by the Board of Governors for baccalaureate degree programs offered by state universities and by the State Board of Education for baccalaureate degree programs offered by Florida College System institutions. Section 1007.25(8), F.S.
[25] Rule 6A-6.0571, F.A.C.
[26] Rule 6A-14.030, F.A.C. and 6A-10.024(6)(b), F.A.C.
[27] Executive Order 01-260 (2001)
[28] Section 8, ch. 2006-74, L.O.F.
[29] Section 1001.215, F.S.

- Provide technical assistance to school districts in the development and implementation of the K-12 comprehensive reading plan.
- Work with the Florida Center for Reading Research to provide information on research-based reading programs and effective reading in the content area strategies.
- Periodically review the Sunshine State Standards for reading at all grade levels.
- Periodically review teacher certification examinations, including alternative certification exams, to ascertain whether the examinations measure the skills needed for research-based reading instruction and instructional strategies for teaching reading in the content areas.
- Work with approved teacher preparation programs to integrate research-based reading instructional strategies and reading in the content area instructional strategies.

III. Effect of Proposed Changes:

Section 1 creates s. 683.1455, F.S., to designate the month of September as "American Founders' Month" and authorize the Governor to issue a proclamation urging all civic, fraternal, and religious organizations and public and private educational institutions to recognize, observe, and celebrate the month. Specifically, this section:

- Encourages all public schools to observe "American Founders' Month" with appropriate instruction and activities.
- Establishes civic literacy as a priority of Florida's K-20 education system.
- Requires the Just Read, Florida! Office to develop and provide access to sequenced, content-rich programming, instructional practices, and resources to increase students' core knowledge and literacy skills including student attainment of state standards for social studies, science, and the arts.
- Requires students initially entering a Florida College System institution or state university in 2018-2019 and thereafter, to demonstrate civic literacy through successful completion of a course or by achieving a passing score on an assessment adopted in rule by the State Board of Education or in regulation by the Board of Governors, as applicable.

Priorities of the K-20 Education System (Section 2)

Section 2 amends s. 1000.03, F.S., to extend the scope of Florida's K-20 education system to establish civic literacy as a priority. Specifically, this section includes as a priority of Florida's K-20 education system that students "are prepared become civically engaged and knowledgeable adults who make positive contributions to their communities."

Patriotic Programs (Sections 1 and 4)

As a component of the required instruction relating to patriotic programs, section 4 amends s. 1003.44, F.S., to encourage all public schools in Florida to coordinate, at all grade levels, instruction related to our nation's Founding Fathers in "American Founders' Month." Also, section 1 encourages civic, fraternal, and religious organizations and public and private educational institutions to recognize and observe "American Founders' Month" through programs, meetings, services, or celebrations in which state, county, and local government officials are invited to participate.

Postsecondary Requirements (Sections 5, 6, and 7)

Section 5 amends s. 1007.25, F.S., to create an additional requirement for students in degree programs at Florida public postsecondary institutions. This section requires that, beginning with students initially entering a Florida College System institution or state university in 2018-2019 and thereafter, each student must demonstrate competency in civic literacy. Demonstration of competency may be through successful completion of a new civic literacy course or revised American History or American Government course, which includes civic literacy, or by achieving a passing score on an existing assessment adopted in State Board of Education (SBE) rule or Board of Governors (BOG) regulation. The chairs of the SBE and BOG must jointly appoint a faculty committee to:

- Develop a new course in civic literacy or revise an existing American History or American Government course, which includes civic literacy.
- Establish course competencies and identify outcomes that include, at a minimum:
  - An understanding of the basic principles of American democracy and how they are applied in our republican form of government.
  - An understanding of the United States Constitution.
  - Knowledge of the founding documents and how they have shaped the nature and functions of our institutions of self-governance.
  - An understanding of landmark Supreme Court cases and their impact on law and society.

Sections 6 and 7 amend ss. 943.22 and 1001.64, F.S., respectively, to correct cross references changed as a result of the modifications to s. 1007.25, F.S.

Just Read, Florida! (Section 3)

Section 3 amends s. 1001.215, F.S., to require the Just Read, Florida! Office to develop and provide access to sequenced, content-rich curriculum programming, instructional practices, and resources that help elementary schools use state-adopted instructional materials to increase students' core knowledge and literacy skills, including student attainment of the Next General Sunshine State Standards for social studies, science, and the arts.

The bill takes 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:

This bill may have a fiscal impact on students if the students are required to pay for the cost of the civics literacy assessment. In addition, if civic literacy competence is a graduation requirement, a student unable to pass the required assessment or course may have to pay additional tuition and fees to retake a course or may delay graduation.

C. Government Sector Impact:

The bill does not impact state revenues or expenditures.

VI. Technical Deficiencies:

Lines 75-77 of the bill require each student initially enrolling in a Florida College System institution or state university in 2018-2019, and thereafter, to demonstrate competency in civic literacy. However, it is unclear if civic literacy competency is a graduation requirement. It is also unclear if the requirement applies to all students or only degree-seeking students.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.22, 1000.03, 1001.215, 1001.64, 1003.44, and 1007.25.

This bill creates section 683.1455 of 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 by Appropriations Subcommittee on Pre-K-12 Education on April 13, 2017:
The committee substitute modifies the postsecondary civic literacy requirement by:

- Specifying that the State Board of Education and Board of Governors must adopt at least one existing civics assessment to measure course competencies established in the bill.
- Specifying that the joint faculty committee established in the bill must develop a new civic literacy course or revise an existing general education core course in American History or American Government to include civic literacy.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment (with title amendment)

Between lines 60 and 61
insert:

Section 4. Sections 5 and 6 of this act may be cited as the "Dorothy L. Hukill Financial Literacy Education Act."

Section 5. Paragraph (d) of subsection (2) of section 1003.41, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

1003.41 Next Generation Sunshine State Standards.—

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(2) Next Generation Sunshine State Standards must meet the following requirements:

(d) Social Studies standards must establish specific curricular content for, at a minimum, geography, United States and world history, government, civics, humanities, and economics, including financial literacy. Financial literacy includes the knowledge, understanding, skills, behaviors, attitudes, and values that will enable a student to make responsible and effective financial decisions on a daily basis. Financial literacy instruction shall be an integral part of instruction throughout the entire economics course and include information regarding earning income; buying goods and services; saving and financial investing; taxes; the use of credit and credit cards; budgeting and debt management, including student loans and secured loans; banking and financial services; planning for one's financial future, including higher education and career planning; credit reports and scores; and fraud and identity theft prevention. The requirements for financial literacy specified under this paragraph do not apply to students entering grade 9 in the 2017-2018 school year and thereafter.

(f) Effective for students entering grade 9 in the 2017-2018 school year and thereafter, financial literacy standards must establish specific curricular content for, at a minimum, personal financial literacy and money management. Financial literacy includes instruction in the areas specified in s. 1003.4282(3)(h).

Section 6. Paragraphs (d) and (g) of subsection (3) of section 1003.4282, Florida Statutes, are amended, and paragraph (h) is added to that subsection, to read:

1003.4282 Requirements for a standard high school diploma.—

(3) STANDARD HIGH SCHOOL DIPLOMA; COURSE AND ASSESSMENT REQUIREMENTS.—

(d) *Three credits in social studies.*—A student must earn one credit in United States History; one credit in World History; one-half credit in economics, which must include financial literacy; and one-half credit in United States Government. The United States History EOC assessment constitutes 30 percent of the student's final course grade. However, for a student entering grade 9 in the 2017-2018 school year or thereafter, financial literacy is not a required component of the one-half credit in economics.

(g) ~~*Eight*~~ *Credits in Electives.*—School districts must develop and offer coordinated electives so that a student may develop knowledge and skills in his or her area of interest, such as electives with a STEM or liberal arts focus. Such electives must include opportunities for students to earn college credit, including industry-certified career education programs or series of career-themed courses that result in industry certification or articulate into the award of college credit, or career education courses for which there is a statewide or local articulation agreement and which lead to college credit. A student entering grade 9 before the 2017-2018 school year must earn eight credits in electives. A student entering grade 9 in the 2017-2018 school year or thereafter must earn seven and one-half credits in electives.

(h) *One-half credit in personal financial literacy.*— Beginning with students entering grade 9 in the 2017-2018 school year, each student shall earn one-half credit in personal

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financial literacy and money management. This instruction must include discussion of or instruction in the following:

1. Types of bank accounts offered, opening and managing a bank account, and assessing the quality of a depository institution's services.

2. Balancing a checkbook.

3. Basic principles of money management, such as spending, credit, credit scores, and managing debt, including retail and credit card debt.

4. Completing a loan application.

5. Receiving an inheritance and related implications.

6. Basic principles of personal insurance policies.

7. Computing federal income taxes.

8. Local tax assessments.

9. Computing interest rates by various mechanisms.

10. Simple contracts.

11. Contesting an incorrect billing statement.

12. Types of savings and investments.

13. State and federal laws concerning finance.

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

And the title is amended as follows:

Delete line 9

and insert:

schools; providing a short title; amending s. 1003.41, F.S.; revising the financial literacy requirements for the Next Generation Sunshine State Standards; amending s. 1003.4282, F.S.; revising the social studies requirements for a standard high school diploma;

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revising the required credits for a standard high school diploma to seven and one-half, rather than eight, credits in electives and to include one-half credit of instruction in personal financial literacy and money management; amending s. 1003.44, F.S.; encouraging

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment

Delete line 64
and insert:
(3) All public schools in the state, including charter schools, are encouraged to

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 46 - 60
and insert:
Section 3. Section 1001.215, Florida Statutes, is amended to read:
1001.215 Just Read, Florida! Office.—There is created in the Department of Education the Just Read, Florida! Office. The office is ~~shall be~~ fully accountable to the Commissioner of Education and shall:


733616

(1) Train ~~highly effective~~ reading coaches.

(2) Create multiple designations of effective reading instruction, with accompanying credentials, to enable ~~which encourage~~ all teachers to integrate reading instruction into their content areas.

(3) Work with the Lastinger Center for Learning at the University of Florida, to develop training for ~~train~~ K-12 teachers, reading coaches, and school principals on effective content-area-specific reading strategies; the integration of content knowledge-rich texts from other core subject areas into reading instruction; evidence-based reading strategies identified in subsection (7); and technology tools to improve student reading performance. For secondary teachers, emphasis shall be on technical text. These strategies must be developed for all content areas in the K-12 curriculum.

(4) Develop and provide access to sequenced, content-rich curriculum programming, instructional practices, and resources that help elementary schools use state-adopted instructional materials to increase students' core knowledge and literacy skills, including student attainment of the Next Generation Sunshine State Standards for social studies, science, and the arts.

(5) ~~(4)~~ Provide parents with information and strategies for assisting their children in reading, including reading in ~~the~~ content areas ~~area~~.

(6) ~~(5)~~ Provide technical assistance to school districts in the development and implementation of district plans for use of the research-based reading instruction allocation provided in s. 1011.62(9) and annually review and approve such plans.


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(7)~~(6)~~ Review, evaluate, and provide technical assistance to school districts' implementation of the K-12 comprehensive reading plan required in s. 1011.62(9).

(8)~~(7)~~ Work with the Florida Center for Reading Research to identify scientifically researched and evidence-based reading instructional and intervention programs that incorporate explicit, systematic, and sequential approaches to teaching phonemic awareness, phonics, vocabulary, fluency, and text comprehension and incorporate decodable or phonetic text instructional ~~provide information on research-based reading programs and effective reading in the content area~~ strategies. Reading intervention includes evidence-based strategies frequently used to remediate reading deficiencies and includes, but is not limited to, individual instruction, multisensory approaches, tutoring, mentoring, or the use of technology that targets specific reading skills and abilities.

(9)~~(8)~~ Periodically review the Next Generation Sunshine State Standards for English Language Arts to determine their appropriateness at each grade level ~~reading at all grade levels~~.

(10)~~(9)~~ Periodically review teacher certification requirements and examinations, including alternative certification requirements and examinations ~~exams~~, to ascertain whether the examinations measure the skills needed for evidence-based ~~research-based~~ reading instruction and instructional strategies for teaching reading, including reading in ~~the~~ content areas.

(11)~~(10)~~ Work with teacher preparation programs approved pursuant to ss. ~~s.~~ 1004.04 and 1004.85 to integrate effective, research-based and evidence-based reading instructional and

intervention strategies, including explicit, systematic, and sequential ~~and~~ reading strategies, multisensory intervention strategies, and reading in ~~the~~ content area instructional strategies into teacher preparation programs.

(12) ~~(11)~~ Administer grants and perform other functions as necessary to help ~~meet the goal that all~~ students read at their highest potential ~~grade level~~.

Section 4. Paragraph (b) of subsection (2) of section 1004.04, Florida Statutes, is amended to read:

1004.04 Public accountability and state approval for teacher preparation programs.—

(2) UNIFORM CORE CURRICULA AND CANDIDATE ASSESSMENT.—

(b) The rules to establish uniform core curricula for each state-approved teacher preparation program must include, but are not limited to, the following:

1. The Florida Educator Accomplished Practices.

2. The state-adopted content standards.

3. Scientifically researched and evidence-based reading instructional strategies that improve reading performance for all students, including explicit, systematic, and sequential approaches to teaching phonemic awareness, phonics, vocabulary, fluency, and text comprehension, and multisensory intervention strategies ~~instruction~~.

4. Content literacy and mathematics practices.

5. Strategies appropriate for the instruction of English language learners.

6. Strategies appropriate for the instruction of students with disabilities.

7. School safety.


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Section 5. Paragraph (a) of subsection (3) of section 1004.85, Florida Statutes, is amended to read:

1004.85 Postsecondary educator preparation institutes.—

(3) Educator preparation institutes approved pursuant to this section may offer competency-based certification programs specifically designed for noneducation major baccalaureate degree holders to enable program participants to meet the educator certification requirements of s. 1012.56. An educator preparation institute choosing to offer a competency-based certification program pursuant to the provisions of this section must implement a program previously approved by the Department of Education for this purpose or a program developed by the institute and approved by the department for this purpose. Approved programs shall be available for use by other approved educator preparation institutes.

(a) Within 90 days after receipt of a request for approval, the Department of Education shall approve a preparation program pursuant to the requirements of this subsection or issue a statement of the deficiencies in the request for approval. The department shall approve a certification program if the institute provides evidence of the institute’s capacity to implement a competency-based program that includes each of the following:

1.a. Participant instruction and assessment in the Florida Educator Accomplished Practices.

b. The state-adopted student content standards.

c. Scientifically researched and evidence-based reading instructional strategies that improve reading performance for all students, including explicit, systematic, and sequential

733616

approaches to teaching phonemic awareness, phonics, vocabulary, fluency, and text comprehension, and multisensory intervention strategies ~~instruction~~.

d. Content literacy and mathematical practices.

e. Strategies appropriate for instruction of English language learners.

f. Strategies appropriate for instruction of students with disabilities.

g. School safety.

2. An educational plan for each participant to meet certification requirements and demonstrate his or her ability to teach the subject area for which the participant is seeking certification, which is based on an assessment of his or her competency in the areas listed in subparagraph 1.

3. Field experiences appropriate to the certification subject area specified in the educational plan with a diverse population of students in a variety of settings under the supervision of qualified educators.

4. A certification ombudsman to facilitate the process and procedures required for participants who complete the program to meet any requirements related to the background screening pursuant to s. 1012.32 and educator professional or temporary certification pursuant to s. 1012.56.

========== 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:

amending s. 1001.215, F.S.; revising the duties of the

Just Read, Florida! Office; amending s. 1004.04, F.S.; revising core curricula requirements for certain teacher preparation programs to include certain reading instruction and interventions; amending s. 1004.85, F.S.; requiring certain educator preparation institutes to provide evidence of specified reading instruction as a condition of program approval and continued approval; amending s. 1003.44, F.S.; encouraging

613868

576-04123-17

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Pre-K - 12 Education)

A bill to be entitled

An act relating to education; creating s. 683.1455, F.S.; designating the month of September as "American Founders' Month"; amending s. 1000.03, F.S.; revising the priorities of Florida's K-20 education system; amending s. 1001.215, F.S.; revising the duties of the Just Read, Florida! Office to include developing and providing access to certain resources for elementary schools; amending s. 1003.44, F.S.; encouraging schools to provide certain instruction; amending s. 1007.25, F.S.; requiring postsecondary students to demonstrate civic literacy; requiring the chairs of the State Board of Education and the Board of Governors to jointly appoint a faculty committee to develop a civic literacy course, or revise an existing general education core course, and establish the course competencies; amending ss. 943.22 and 1001.64, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 683.1455, Florida Statutes, is created to read:

683.1455 American Founders' Month.—

(1) The month of September of each year is designated as "American Founders' Month."

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576-04123-17

(2) The Governor may annually issue a proclamation designating the month of September as "American Founders' Month" and urging all civic, fraternal, and religious organizations and public and private educational institutions to recognize and observe this occasion through appropriate programs, meetings, services, or celebrations in which state, county, and local governmental officials are invited to participate.

Section 2. Present paragraphs (c) through (g) of subsection (5) of section 1000.03, Florida Statutes, are redesignated as paragraphs (d) through (h), respectively, and a new paragraph (c) is added to that subsection, to read:

1000.03 Function, mission, and goals of the Florida K-20 education system.—

(5) The priorities of Florida's K-20 education system include:

(c) *Civic literacy.*—Students are prepared to become civically engaged and knowledgeable adults who make positive contributions to their communities.

Section 3. Present subsections (4) through (11) of section 1001.215, Florida Statutes, are redesignated as subsections (5) through (12), respectively, and a new subsection (4) is added to that section, to read:

1001.215 Just Read, Florida! Office.—There is created in the Department of Education the Just Read, Florida! Office. The office shall be fully accountable to the Commissioner of Education and shall:

(4) Develop and provide access to sequenced, content-rich curriculum programming, instructional practices, and resources that help elementary schools use state-adopted instructional

materials to increase students' core knowledge and literacy skills, including student attainment of the Next Generation Sunshine State Standards for social studies, science, and the arts.

Section 4. Subsection (3) is added to section 1003.44, Florida Statutes, to read:

1003.44 Patriotic programs; rules.—

(3) All public schools in the state are encouraged to coordinate, at all grade levels, instruction related to our nation's Founding Fathers with "American Founders' Month" pursuant to s. 683.1455.

Section 5. Present subsections (4) through (11) of section 1007.25, Florida Statutes, are redesignated as subsections (5) through (12), respectively, and a new subsection (4) is added to that section, to read:

1007.25 General education courses; common prerequisites; other degree requirements.—

(4) Beginning with students initially entering a Florida College System institution or state university in 2018-2019 and thereafter, each student must demonstrate competency in civic literacy. A student must have the option to demonstrate competency through successful completion of a civic literacy course or by achieving a passing score on an assessment. The State Board of Education must adopt in rule and the Board of Governors must adopt in regulation at least one existing assessment that measures competencies consistent with the required course competencies outlined in paragraph (b). The chair of the State Board of Education and the chair of the Board of Governors, or their respective designees, shall jointly

appoint a faculty committee to:

(a) Develop a new course in civic literacy or revise an existing general education core course in American History or American Government to include civic literacy; and

(b) Establish course competencies and identify outcomes that include, at a minimum, an understanding of the basic principles of American democracy and how they are applied in our republican form of government, an understanding of the United States Constitution, knowledge of the founding documents and how they have shaped the nature and functions of our institutions of self-governance, and an understanding of landmark Supreme Court cases and their impact on law and society.

Section 6. Paragraph (c) of subsection (1) of section 943.22, Florida Statutes, is amended to read:

943.22 Salary incentive program for full-time officers.—

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

(c) "Community college degree or equivalent" means graduation from an accredited community college or having been granted a degree pursuant to s. 1007.25(11) ~~s. 1007.25(10)~~ or successful completion of 60 semester hours or 90 quarter hours and eligibility to receive an associate degree from an accredited college, university, or community college.

Section 7. Subsection (7) and paragraph (d) of subsection (8) of section 1001.64, Florida Statutes, are amended to read:

1001.64 Florida College System institution boards of trustees; powers and duties.—

(7) Each board of trustees has responsibility for: ensuring that students have access to general education courses as identified in rule; requiring no more than 60 semester hours of

degree program coursework, including 36 semester hours of general education coursework, for an associate in arts degree; notifying students that earned hours in excess of 60 semester hours may not be accepted by state universities; notifying students of unique program prerequisites; and ensuring that degree program coursework beyond general education coursework is consistent with degree program prerequisite requirements adopted pursuant to s. 1007.25(6) ~~s. 1007.25(5)~~.

(8) Each board of trustees has authority for policies related to students, enrollment of students, student records, student activities, financial assistance, and other student services.

(d) Boards of trustees shall identify their general education curricula pursuant to s. 1007.25(7) ~~s. 1007.25(6)~~.

Section 8. 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:	SB 1710
INTRODUCER:	Senators Stargel and Grimsley
SUBJECT:	Education
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**
4.			RC	

I. Summary:

SB 1710 designates the month of September as "American Founders' Month" and authorizes the Governor to issue a proclamation urging all civic, fraternal, and religious organizations and public and private educational institutions to recognize, observe, and celebrate the month. Specifically, the bill:

- Encourages all public schools to observe "American Founders' Month" with appropriate instruction and activities.
- Establishes civic literacy as a priority of Florida's K-20 education system.
- Requires the Just Read, Florida! Office to develop and provide access to sequenced, content-rich programming, instructional practices, and resources to increase students' core knowledge and literacy skills including student attainment of state standards for social studies, science, and the arts.
- Requires students initially entering a Florida College System institution or state university in 2018-2019 and thereafter, to demonstrate civic literacy through successful completion of a civic literacy course or by achieving a passing score on an assessment adopted in rule by the State Board of Education or in regulation by the Board of Governors, as applicable.

The bill has no impact on state funds.

The bill takes effect on July 1, 2017.

II. Present Situation:

Florida has established mechanisms to increase the civic awareness and engagement among students through civic-engagement skills in the curriculum standards for all subjects,[1] and

[1] Section 1003.41(1), F.S.

specifically social studies;[2] a middle grades civics education course[3] and end-of-course assessment;[4] and the inclusion of such end-of-course assessment in the calculation of school grades.[5]

Priorities of the K-20 Education System

The mission of Florida's K-20 education system is to allow students to increase their proficiency by providing the opportunity to expand their knowledge and skills through rigorous and relevant learning opportunities.[6] As such, the priorities of Florida's K-20 education system include:[7]

- Demonstration that all students meet the expected academic standards consistently at all levels of their education.
- Learning and completion at all levels, so that all students demonstrate increased learning and completion at all levels, graduate from high school, and are prepared to enter postsecondary education without remediation.
- Alignment of standards and resources for every level of the K-20 education system.
- Improved educational leadership at all levels of K-20 education.
- Alignment of workforce education with skills required by the new global economy.
- Collaboration between parents, students, families, educational institutions, and communities as important to each individual student's success; the goals of Florida's K-20 education system are not guarantees that each individual student will succeed or that each individual school will perform at the level indicated in the goals.
- Comprehensive K-20 career and education planning to better prepare all students at every level for the transition from school to postsecondary education or work.

Patriotic Programs

District school boards are authorized to adopt rules that require patriotic programs in district schools that encourage respect for the United States government, the national anthem, and the flag.[8] The law also specifies procedures for the playing of the national anthem and recitation of the pledge of allegiance to the flag in public schools and at school-sponsored functions.[9] The pledge must be recited at the beginning of the day in each public school in the state.[10] Students must be excused from reciting the pledge if his or her parent submits a written request.[11]

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[2] Section 1003.41(2)(d), F.S.
[3] Section 1003.4156(1)(c), F.S. The one-semester civics education course must include the roles and responsibilities of federal, state, and local governments; the structures and functions of the legislative, executive, and judicial branches of government; and the meaning and significance of historic documents, such as the Articles of Confederation, the Declaration of Independence, and the Constitution of the United States. *Id.*
[4] Section 1008.22(3)(b)1., F.S.
[5] Section 1008.34(3)(b)1.d., F.S.
[6] Section 1000.03(4), F.S.
[7] *Id*. at (5).
[8] Section 1003.44(1), F.S.
[9] *Id.*
[10] *Id.*
[11] *Id.*

Postsecondary Requirements

Civics Instruction

Currently, there is not a state civics requirement for students attending a Florida public postsecondary institution.[12] Students in the Florida College System and State University System are offered opportunities to study civics through courses in their general education core curriculum, as well as in civics courses in specific programs of study.[13]

Florida law requires a student to complete at least one social science course as a part of the general education core degree requirement.[14] The courses available to complete this requirement are in:[15]

- American History;
- Anthropology;
- Macroeconomics;
- American Government;
- Psychology; and
- Sociology.

Of the social science courses taken in 2014-15, 45 percent were civics related.[16] Also, 17 percent of all university undergraduates, and 21 percent of all college students enrolled in college-credit courses took at least one civics-related course in 2014-2015.[17]

Degree Requirements

The following state-level requirements apply to students seeking an associate in arts or baccalaureate degree from a Florida public postsecondary institution:

- Completion of 36 semester hours of general education coursework in the areas of communication, humanities, mathematics, natural science, and social science.[18]
- Beginning with students initially entering a Florida College System institution or state university in 2015-2016 and thereafter, complete at least one identified core course in each subject area as part of the general education course requirements.[19]

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[12] Office of Program Policy Analysis and Government Accountability, *OPPAGA Research on Postsecondary Civics Education*, at 8, presentation to the House of Representatives PreK-12 Quality Subcommittee (Feb. 15, 2017), *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2909&Session=2017&DocumentType=Meeting%20Packets&FileName=pkq%202-15-17.pdf.

[13] *Id.* at 10.

[14] Section 1007.25(3), F.S.

[15] Rule 6A-14.0303, F.A.C.

[16] Office of Program Policy Analysis and Government Accountability, *OPPAGA Research on Postsecondary Civics Education*, at 14, presentation to the House of Representatives PreK-12 Quality Subcommittee (Feb. 15, 2017), *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2909&Session=2017&DocumentType=Meeting%20Packets&FileName=pkq%202-15-17.pdf. Psychology was the most popular social science general education course.

[17] *Id.* at 11. These include American History, Government, and Economics.

[18] Section 1007.25, F.S. *See also* Rule 6A-10.024(2)(a) and (3)(a), F.A.C., Rule 6A-10.030(1) and (2), F.A.C., and BOG Regulation 6.017(1)(a).

[19] Section 1007.25(3), F.S.

- Beginning with students initially entering a Florida College System institution or state university in 2014-2015 and thereafter, coursework for an associate in arts degree must include demonstration of competency in a foreign language.[20]
- Completion of six semester hours of English coursework, six semester hours of other coursework in which the student is required to demonstrate college-level writing skills through multiple assignments, and six semester hours of mathematics at the level of college algebra or higher.[21]
- For associate in arts degrees, students initially entering a Florida College System institution in 2013-2014 and thereafter, must indicate a baccalaureate degree program offered by an institution of interest by the time the student earns 30 semester hours.[22]
- For an associate in arts degree, completion of no more than 60 semester hours of college credit;[23] for a baccalaureate degree, completion of no more than 120 semester hours of college credit.[24]

Students in associate in science and associate in applied science degree programs must satisfactorily complete a planned program of instruction comprised of the established credit hour length[25] and complete fifteen semester credit hours of general education coursework.[26]

Just Read, Florida!

In 2001,[27] Governor Jeb Bush established Just Read, Florida! as a comprehensive and coordinated reading initiative intended to establish reading as a core value in this state. In 2006,[28] the Legislature created within the DOE the Just Read, Florida! Office. Among its duties, the Just Read, Florida! Office must:[29]

- Create multiple designations of effective reading instruction, with accompanying credentials, which encourage all teachers to integrate reading instruction into their content areas.
- Train K-12 teachers and school principals on effective content-area-specific reading strategies. For secondary teachers, emphasis must be on technical text.
- Provide parents with information and strategies for assisting their children in reading in the content area.
- Provide technical assistance to school districts in the development and implementation of the K-12 comprehensive reading plan.
- Work with the Florida Center for Reading Research to provide information on research-based reading programs and effective reading in the content area strategies.
- Periodically review the Sunshine State Standards for reading at all grade levels.

[20] Section 1007.25(7), F.S.
[21] Rule 6A-10.030, F.A.C. and BOG Regulation 6.017(1)(a)
[22] Section 1007.23(3), F.S. and 6A-10.024(4), F.A.C.
[23] Students must achieve a cumulative grade point average of 2.0. Rule 6A-10.024, F.A.C.
[24] 1007.25(7) and (8), F.S. See also Rule 6A-14.030(2), F.A.C., Rule 6A.10.024(3)(a), F.A.C., and BOG Regulation 6.017(1)(c). The 120 semester hour limit may be waived with prior approval by the Board of Governors for baccalaureate degree programs offered by state universities and by the State Board of Education for baccalaureate degree programs offered by Florida College System institutions. Section 1007.25(8), F.S.
[25] Rule 6A-6.0571, F.A.C.
[26] Rule 6A-14.030, F.A.C. and 6A-10.024(6)(b), F.A.C.
[27] Executive Order 01-260 (2001)
[28] Section 8, ch. 2006-74, L.O.F.
[29] Section 1001.215, F.S.

- Periodically review teacher certification examinations, including alternative certification exams, to ascertain whether the examinations measure the skills needed for research-based reading instruction and instructional strategies for teaching reading in the content areas.
- Work with approved teacher preparation programs to integrate research-based reading instructional strategies and reading in the content area instructional strategies.

III. Effect of Proposed Changes:

Section 1 creates s. 683.1455, F.S., to designate the month of September as "American Founders' Month" and authorize the Governor to issue a proclamation urging all civic, fraternal, and religious organizations and public and private educational institutions to recognize, observe, and celebrate the month. Specifically, this section:

- Encourages all public schools to observe "American Founders' Month" with appropriate instruction and activities.
- Establishes civic literacy as a priority of Florida's K-20 education system.
- Requires the Just Read, Florida! Office to develop and provide access to sequenced, content-rich programming, instructional practices, and resources to increase students' core knowledge and literacy skills including student attainment of state standards for social studies, science, and the arts.
- Requires students initially entering a Florida College System institution or state university in 2018-2019 and thereafter, to demonstrate civic literacy through successful completion of a civic literacy course or by achieving a passing score on an assessment adopted in rule by the State Board of Education or in regulation by the Board of Governors, as applicable.

Priorities of the K-20 Education System (Section 2)

Section 2 amends s. 1000.03, F.S., to extend the scope of Florida's K-20 education system to establish civic literacy as a priority. Specifically, this section includes as a priority of Florida's K-20 education system that students "are prepared become civically engaged and knowledgeable adults who make positive contributions to their communities."

Patriotic Programs (Sections 1 and 4)

As a component of the required instruction relating to patriotic programs, section 4 amends s. 1003.44, F.S., to encourage all public schools in Florida to coordinate, at all grade levels, instruction related to our nation's Founding Fathers in "American Founders' Month." Also, section 1 encourages civic, fraternal, and religious organizations and public and private educational institutions to recognize and observe "American Founders' Month" through programs, meetings, services, or celebrations in which state, county, and local government officials are invited to participate.

Postsecondary Requirements (Sections 5, 6, and 7)

Section 5 amends s. 1007.25, F.S., to create an additional requirement for students in degree programs at Florida public postsecondary institutions. This section requires that, beginning with students initially entering a Florida College System institution or state university in 2018-2019 and thereafter, each student must demonstrate competency in civic literacy. Demonstration of

competency may be through successful completion of a civic literacy course or by achieving a passing score on an assessment adopted in State Board of Education (SBE) rule or Board of Governors (BOG) regulation. The chairs of the SBE and BOG must jointly appoint a faculty committee to:

- Develop a new course in civic literacy or revise an existing general education core course.
- Establish course competencies and identify outcomes that include, at a minimum:
  - An understanding of the basic principles of American democracy and how they are applied in our republican form of government.
  - An understanding of the United States Constitution.
  - Knowledge of the founding documents and how they have shaped the nature and functions of our institutions of self-governance.
  - An understanding of landmark Supreme Court cases and their impact on law and society.

Sections 6 and 7 amend ss. 943.22 and 1001.64, F.S., respectively, to correct cross references changed as a result of the modifications to s. 1007.25, F.S.

Just Read, Florida! (Section 3)

Section 3 amends s. 1001.215, F.S., to require the Just Read, Florida! Office to develop and provide access to sequenced, content-rich curriculum programming, instructional practices, and resources that help elementary schools use state-adopted instructional materials to increase students' core knowledge and literacy skills, including student attainment of the Next General Sunshine State Standards for social studies, science, and the arts.

The bill takes 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:

This bill may have a fiscal impact on students if the students are required to pay for the cost of the civics literacy assessment. In addition, if civic literacy competence is a graduation requirement, a student unable to pass the required assessment or course may have to pay additional tuition and fees to retake a course or may delay graduation.

C. Government Sector Impact:

Florida College System institutions and state universities may have costs associated with developing or purchasing a civic literacy assessment.

VI. Technical Deficiencies:

Lines 75-77 of the bill require each student initially enrolling in a Florida College System institution or state university in 2018-2019, and thereafter, to demonstrate competency in civic literacy. However, it is unclear if civic literacy competency is a graduation requirement. It is also unclear if the requirement applies to all students or only degree-seeking students.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.22, 1000.03, 1001.215, 1001.64, 1003.44, and 1007.25.

This bill creates section 683.1455 of 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 Stargel

22-01277A-17 20171710__

A bill to be entitled

An act relating to education; creating s. 683.1455, F.S.; designating the month of September as "American Founders' Month"; amending s. 1000.03, F.S.; revising the priorities of Florida's K-20 education system; amending s. 1001.215, F.S.; revising the duties of the Just Read, Florida! Office to include developing and providing access to certain resources for elementary schools; amending s. 1003.44, F.S.; encouraging schools to provide certain instruction; amending s. 1007.25, F.S.; requiring postsecondary students to demonstrate civic literacy; requiring the chairs of the State Board of Education and the Board of Governors to jointly appoint a faculty committee to develop a civic literacy course, or revise an existing general education core course, and establish the course competencies; amending ss. 943.22 and 1001.64, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 683.1455, Florida Statutes, is created to read:

683.1455 American Founders' Month.—

(1) The month of September of each year is designated as "American Founders' Month."

(2) The Governor may annually issue a proclamation designating the month of September as "American Founders' Month"

22-01277A-17 20171710__

and urging all civic, fraternal, and religious organizations and public and private educational institutions to recognize and observe this occasion through appropriate programs, meetings, services, or celebrations in which state, county, and local governmental officials are invited to participate.

Section 2. Present paragraphs (c) through (g) of subsection (5) of section 1000.03, Florida Statutes, are redesignated as paragraphs (d) through (h), respectively, and a new paragraph (c) is added to that subsection, to read:

1000.03 Function, mission, and goals of the Florida K-20 education system.—

(5) The priorities of Florida's K-20 education system include:

(c) *Civic literacy.*—Students are prepared to become civically engaged and knowledgeable adults who make positive contributions to their communities.

Section 3. Present subsections (4) through (11) of section 1001.215, Florida Statutes, are redesignated as subsections (5) through (12), respectively, and a new subsection (4) is added to that section, to read:

1001.215 Just Read, Florida! Office.—There is created in the Department of Education the Just Read, Florida! Office. The office shall be fully accountable to the Commissioner of Education and shall:

(4) Develop and provide access to sequenced, content-rich curriculum programming, instructional practices, and resources that help elementary schools use state-adopted instructional materials to increase students' core knowledge and literacy skills, including student attainment of the Next Generation

Sunshine State Standards for social studies, science, and the arts.

Section 4. Subsection (3) is added to section 1003.44, Florida Statutes, to read:

1003.44 Patriotic programs; rules.—

(3) All public schools in the state are encouraged to coordinate, at all grade levels, instruction related to our nation's Founding Fathers with "American Founders' Month" pursuant to s. 683.1455.

Section 5. Present subsections (4) through (11) of section 1007.25, Florida Statutes, are redesignated as subsections (5) through (12), respectively, and a new subsection (4) is added to that section, to read:

1007.25 General education courses; common prerequisites; other degree requirements.—

(4) Beginning with students initially entering a Florida College System institution or state university in 2018-2019 and thereafter, each student must demonstrate competency in civic literacy. A student must have the option to demonstrate competency through successful completion of a civic literacy course or by achieving a passing score on an assessment adopted in rule by the State Board of Education or in regulation by the Board of Governors, as applicable. The chair of the State Board of Education and the chair of the Board of Governors, or their respective designees, shall jointly appoint a faculty committee to:

(a) Develop a new course in civic literacy or revise an existing general education core course; and

(b) Establish course competencies and identify outcomes

that include, at a minimum, an understanding of the basic principles of American democracy and how they are applied in our republican form of government, an understanding of the United States Constitution, knowledge of the founding documents and how they have shaped the nature and functions of our institutions of self-governance, and an understanding of landmark Supreme Court cases and their impact on law and society.

Section 6. Paragraph (c) of subsection (1) of section 943.22, Florida Statutes, is amended to read:

943.22 Salary incentive program for full-time officers.—

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

(c) "Community college degree or equivalent" means graduation from an accredited community college or having been granted a degree pursuant to s. 1007.25(11) ~~s. 1007.25(10)~~ or successful completion of 60 semester hours or 90 quarter hours and eligibility to receive an associate degree from an accredited college, university, or community college.

Section 7. Subsection (7) and paragraph (d) of subsection (8) of section 1001.64, Florida Statutes, are amended to read:

1001.64 Florida College System institution boards of trustees; powers and duties.—

(7) Each board of trustees has responsibility for: ensuring that students have access to general education courses as identified in rule; requiring no more than 60 semester hours of degree program coursework, including 36 semester hours of general education coursework, for an associate in arts degree; notifying students that earned hours in excess of 60 semester hours may not be accepted by state universities; notifying students of unique program prerequisites; and ensuring that

degree program coursework beyond general education coursework is consistent with degree program prerequisite requirements adopted pursuant to s. 1007.25(6) ~~s. 1007.25(5)~~.

(8) Each board of trustees has authority for policies related to students, enrollment of students, student records, student activities, financial assistance, and other student services.

(d) Boards of trustees shall identify their general education curricula pursuant to s. 1007.25(7) ~~s. 1007.25(6)~~.

Section 8. This 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)

4/25/2017
Meeting Date

1710
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City *State* *Zip*

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

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.

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)

4/25/17
Meeting Date

1710
Bill Number (if applicable)

Topic Civic Literacy

Amendment Barcode (if applicable)

Name John Trombetta

Job Title CEO

Address 600 1st Ave N.
Street

St. Petersburg FL 33701
City *State* *Zip*

Phone 850-320-8319

Email john@floridaymcas.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida State Alliance of YMCAs

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

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
1/30/17	SM	**Favorable**
2/22/17	JU	**Fav/CS**
4/17/17	AHS	**Recommend: Favorable**
4/24/17	AP	**Favorable**

January 30, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 28** – Judiciary Committee and Senator David Simmons
HB 6501 – Representative Scott Plakon
Relief of J.D.S.

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR $950,000 PAYABLE TO THE AGED POOLED SPECIAL NEEDS TRUST ON BEHALF OF J.D.S., BASED ON A SETTLEMENT AGREEMENT BETWEEN PATTI R. JARRELL, AS PLENARY GUARDIAN OF J.D.S., AND THE STATE OF FLORIDA, AGENCY FOR PERSONS WITH DISABILITIES. THE CLAIM AROSE FROM THE NEGLIGENT SUPERVISION OF A GROUP HOME BY THE AGENCY.

FINDINGS OF FACT:

In 1980, J.D.S. was born with severe disabilities, including cerebral palsy, autism, and mental retardation. J.D.S. has a 31 IQ and has been nonverbal her entire life. J.D.S. was placed in the custody of the State of Florida, Department of Children and Families (DCF) and considered to be a "ward" of DCF. Due to her condition, J.D.S. was dependent upon DCF for the provision of her care, treatment, and daily needs.

At the age of 4, J.D.S., as a developmentally-disabled dependent ward of the State of Florida, was placed in the Strong Group Home. J.D.S. was totally dependent on the Strong Group Home to provide the care for her needs. She was incapable of performing even the most basic functions of life. The Strong Group Home was licensed by DCF to operate

the group home, and the home was monitored through face to face visits on a monthly basis with the exception of a short interval when, due to budget cuts, visits occurred either every other month or quarterly. The Strong Group Home was also visited monthly by the Medicaid Waiver Support Coordinator who had the responsibility of ensuring J.D.S. was receiving her care plan services. Hester Strong was the administrator/owner of the Strong Group Home and was assisted by her husband, Phillip Strong. In addition to caring for 4 - 6 developmentally disabled persons, Ms. Strong cared for her elderly parents who also resided in the home.

Beginning in late 2001 and into 2002, J.D.S.'s behavior became more aggressive. She began to resist getting into a car which had not been an exhibited behavior in the past. And, although she was previously toilet trained, she began exhibiting regular incontinence. Ms. Strong did not report these changes in J.D.S.'s behaviors, and the DCF monitoring reports of the Strong Group Home did not contain any reference to them.

In December 2002, J.D.S. became pregnant while a resident in the Strong Group Home. J.D.S. was 5 months pregnant when her doctor discovered her pregnancy.

Upon the discovery of J.D.S.'s pregnancy, DCF revoked the Strong Group Home's license and J.D.S. was moved to another group home. J.D.S. gave birth to a baby girl on August 30, 2003. The newborn was immediately removed from J.D.S. and placed for adoption. Following the birth, the Florida Department of Law Enforcement took DNA samples from Phillip Strong and the newborn. The results of the DNA testing confirmed that Phillip Strong was the biological father of the infant.

DCF was responsible for the oversight of the Strong Group Home and providing care to J.D.S. when the events related to the claim bill occurred. However, in 2004, the responsibility to oversee group homes for the disabled was transferred to the Agency for Persons with Disabilities along with DCF's related liabilities.

Based on the foregoing, the State of Florida, Agency for Persons with Disabilities, stipulated to the entry of a judgment in the amount of $1,150,000. The Agency for Persons' with

Disabilities paid $200,000 to the AGED Pooled Special Needs Trust on behalf of J.D.S., leaving $950,000, which is the amount sought through this claim bill.

CLAIMANT'S POSITION: The Agency for Persons with Disabilities is directly and vicariously liable for the rape and subsequent pregnancy of J.D.S. The claimant also alleges that the rape of J.D.S. was foreseeable by the agency. It should be noted that Mr. Strong was determined incompetent and never charged with the rape of J.D.S.

RESPONDENT'S POSITION: The Agency for Persons with Disabilities settled this claim before a jury trial and is neutral in this proceeding and will take no action adverse to the passage of a claim bill.

CONCLUSIONS OF LAW: As provided in s. 768.28, F.S. (2002), sovereign immunity shields the State of Florida and its agencies against tort liability in excess of $200,000 per occurrence. The parties settled the case for $1.15 million, and the Agency for Persons with Disabilities paid $200,000 to the AGED Pooled Special Needs Trust on behalf of J.D.S. The claimant alleged APD is liable for the sexual molestation of J.D.S. under two separate legal precepts: vicarious liability and direct liability. The claimant alleged APD had a "non-delegable" duty to protect J.D.S. from harm and sexual assault. At all times material to this matter J.D.S. was a resident of the Strong Group Home.

APD is a governmental agency that licenses, monitors, and places clients in residential living facilities. APD does not undertake to provide direct services to any particular client. Instead, the Florida Legislature, in s. 393.066, F.S. (2002), has mandated that the day-to-day operational level duties of care and maintenance of a client are to be delegated by APD.

Duty

Whether there is a jury verdict or a settlement agreement, as there is in this case, every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. DCF had a duty to protect and care for J.D.S. while she was in the care of the Strong Group Home. This duty included ensuring the administrator and staff of the Strong Group Home were properly trained to detect and prevent sexual abuse of the developmentally-disabled individuals placed in their care; adequate staffing was in place at all times and the staff met training requirements; the number of placements in

the home did not exceed the limit established by DCF; and the home complied with the Bill of Rights of Persons with Developmental Disabilities as set forth under s. 393.13, F.S. (2002). Such Bill of Rights guarantees that developmentally disabled individuals have the right to be free from sexual abuse in a residential facility, the right to be free from harm, and the right to receive prompt and appropriate medical care and treatment.

The Strong Group Home administrator and staff did not meet the educational and training requirements set forth in Rule 65G-2.012, F.A.C., and s. 393.067, F.S. (2002). There was no evidence presented that the administrator met the educational requirements for licensing or that she or any staff member had received any training on how to detect, report, or prevent sexual abuse of the group home's residents and clients.

The Strong Group Home was licensed for and housed 4 - 6 developmentally disabled clients. Nevertheless, at one point while J.D.S. was in the home, DCF placed two foster children in the home. As a result of the placement of additional clients, not enough bedrooms were available and the dining room was converted into J.D.S.'s bedroom. The placement of her bed in the dining room area did not provide J.D.S. the privacy she was entitled to under the Bill of Rights of Persons with Developmental Disabilities set out in s. 393.13, F.S.

Additionally, the Strong Group Home had a duty to exercise reasonable care to protect J.D.S. from abuse and neglect, including sexual abuse; to exercise reasonable care to discover abuse and neglect, to provide J.D.S. with a reasonable, safe living environment that afforded her with privacy, and to exercise reasonable care to ensure she received prompt and appropriate medical care and treatment.

Breach

A preponderance of the evidence establishes that The Strong Group Home did not meet the educational and training requirements to be licensed as a group home initially by DCF and subsequently by APD. APD and the Strong Group Home as licensed by APD, breached their duty to properly care for and protect J.D.S. Further, APD and the Strong Group Home breached their duty to J.D.S. with respect to compliance with the rights and privileges afforded the developmentally

disabled pursuant to the Bill of Rights of the Developmentally Disabled.

Causation
The failure of the Department of Children and Families and subsequently the Agency for Persons with Disabilities to ensure the staff of the Strong Group Home was properly trained, possessed the required levels of education and credentials likely led to the rape of J.D.S.

Damages
The claim bill awards $950,000 for the benefit of J.D.S. No evidence was presented or available indicating that the damages authorized by the settlement are excessive or inappropriate.

ATTORNEYS FEES: Section 768.28(8), F.S., provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." The claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded in compliance with the statutes. Lobbyists' fees are included with the attorneys' fees.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 28 be reported FAVORABLY.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include the limits on costs, lobbying fees, and other similar expenses, which were included in the original bill.

By the Committee on Judiciary; and Senator Simmons

590-01949-17 201728c1

A bill to be entitled

An act for the relief of J.D.S.; providing an appropriation from the General Revenue Fund to compensate J.D.S. for injuries and damages sustained as a result of the negligence of the Agency for Persons with Disabilities, as successor agency of the Department of Children and Family Services; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, in December 2002, J.D.S., a 22-year-old developmentally disabled woman with autism, cerebral palsy, and mental retardation, was living at the Strong Group Home, which was owned and operated by Hester Strong and licensed and supervised by the Department of Children and Family Services, and

WHEREAS, in December 2002, J.D.S. was raped and impregnated by Philip Strong, husband of the owner and operator of the Strong Group Home, and

WHEREAS, on April 24, 2003, J.D.S.'s pregnancy was discovered by her physician, and on August 30, 2003, J.D.S. gave birth to a baby girl, known as G.V.S., who was immediately taken from J.D.S. and placed for adoption, and

WHEREAS, as a result of her rape and impregnation, J.D.S. sustained mental anguish and a further diminution in the quality of her life, and

WHEREAS, J.D.S. filed a claim in Orange County Circuit

Florida Senate - 2017 **(NP) CS for SB 28**

590-01949-17 201728c1

Court alleging that the department negligently supervised the Strong Group Home and that the Strong Group Home was negligently operated, thereby allowing Philip Strong to rape J.D.S., which resulted in her impregnation, and

WHEREAS, J.D.S.'s claims against the department, the Strong Group Home, and other parties were based upon negligence, violations of chapter 393, Florida Statutes, and violations of the Bill of Rights of Persons with Developmental Disabilities, as set forth in s. 393.13, Florida Statutes, and

WHEREAS, as a client of the department, as the term "client" is defined in s. 393.063, Florida Statutes, J.D.S. had a right under s. 393.13, Florida Statutes, to "dignity, privacy, and humane care, including the right to be free from abuse, including sexual abuse, neglect, and exploitation," and

WHEREAS, J.D.S. alleged that the department had a nondelegable duty to protect her from foreseeable harm, including sexual abuse, and

WHEREAS, J.D.S. alleged that the department was liable for direct negligence relating to its oversight of the Strong Group Home and that it was vicariously liable for the negligence of the Strong Group Home under the doctrine of respondeat superior established under s. 768.28(9)(a), Florida Statutes, and

WHEREAS, before the jury trial was scheduled to commence on February 6, 2012, the parties agreed to settle the case titled *Patti R. Jarrell, as plenary guardian of J.D.S., an incapacitated person, Plaintiff, v. State of Florida, Agency for Persons With Disabilities, as successor agency of the Department of Children and Family Services*, for the sum of $1.15 million, and

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

WHEREAS, under the terms of the settlement agreement consented to by the parties, the Agency for Persons with Disabilities agreed to pay $200,000 to J.D.S., with the remaining $950,000 to be paid pursuant to a stipulated claim bill, and

WHEREAS, the agency has agreed to request an appropriation from the Legislature in the amount of $950,000, and

WHEREAS, the $950,000 stipulated settlement is sought through the submission of a claim bill to the Legislature, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $950,000 is appropriated from the General Revenue Fund to the Agency for Persons with Disabilities for the relief of J.D.S. as compensation for the injuries and damages she sustained.

Section 3. The Chief Financial Officer shall draw a warrant upon funds of the Agency for Persons with Disabilities in the sum of $950,000 and shall pay such amount out of funds in the State Treasury to the AGED Pooled Special Needs Trust, which shall be managed and administered on behalf of J.D.S. by AGED, Inc., a nonprofit trust company.

Section 4. The amount paid by the Agency for Persons with Disabilities pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of

the factual situation described in this act which resulted in the injuries and damages to J.D.S. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 5. 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: April 18, 2017

I respectfully request that **Senate Bill 28**, relating to Relief of J.D.S. by the Agency for Persons with Disabilities, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 844 (528916)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Simmons and others
SUBJECT:	Criminal Offenses Involving Tombs and Memorials
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	**Fav/CS**
2.	McAuliffe	Sadberry	ACJ	**Recommend: Fav/CS**
3.	McAuliffe	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 844 provides an exception for cemeteries exempt under chapter 497, Florida Statutes, from the criminal penalties in section 872.02, Florida Statutes.

Currently, under section 872.02, Florida Statutes, it is a third degree felony to willfully and knowingly damage or remove a tomb, monument, or other specified structure and a second degree felony to willfully and knowingly disturb the contents of a grave or tomb. The penalties do not apply to certain persons, like cemeteries operating under chapter 497, Florida Statutes, (the Florida Funeral, Cemetery, and Consumer Services Act). However, there are cemeteries that are exempt from the regulation and licensing requirements of chapter 497, Florida Statutes, and these cemeteries are not exempt from the criminal penalties of section 872.02, Florida Statutes. If a person at such a cemetery were to disinter a dead human body at the request of a legally authorized person, he or she could be criminally charged under section 872.02, Florida Statutes.

The bill provides an exception for cemeteries exempt under chapter 497, Florida Statutes, from the criminal penalties in section 872.02, Florida Statutes. The bill also specifies the criteria that an exempt cemetery must meet to relocate the contents of a grave or tomb. If a legally authorized person refuses to sign a contract or objects to the relocation a public hearing must be held before the applicable city council or county commission.

The bill also clarifies elements of the offense of disturbing the contents of a grave or tomb.

The Criminal Justice Impact Conference met on March 2, 2017, and determined that the bill, as originally filed, will insignificantly increase state prison beds. The bill may have a negative fiscal impact on both privately owned exempt cemeteries and county and city owned exempt cemeteries. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

II. Present Situation:

Cemeteries

A cemetery is a place dedicated to, used, or intended to be used for the permanent interment of human remains or cremated remains. A cemetery can be any combination of one or more of the following structures or places:

- Land or earth interment;
- Mausoleum, vault, or crypt interment; or
- Columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains.[1]

Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act, specifies that the Board of Funeral, Cemetery and Consumer Services (board) oversee the regulation and licensing of cemeteries. Section 497.260, F.S., exempts numerous types of cemeteries from these regulation and licensing requirements. Currently, there are 171 licensed cemeteries[2] and anywhere from 3500-5000 cemeteries exempt from licensing and regulation in Florida.[3]

Exempt cemeteries include:

- Religious institution cemeteries of less than 5 acres, which provide only single-level ground burial;
- County and municipal cemeteries;
- Community and nonprofit association cemeteries, which provide only single-level ground burial and do not sell burial spaces or burial merchandise;
- Cemeteries owned and operated or dedicated by a religious institution prior to June 23, 1976;
- Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent;
- A columbarium consisting of less than one-half acre, which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning;[4]

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[1] Section 497.005(13), F.S.

[2] Division of Funeral, Cemetery and Consumer Services, *Who We Regulate, Regulated Categories and Number of Licensees*, August 19, 2016, available at http://www.myfloridacfo.com/Division/FuneralCemetery/About/Whoweregulate.htm (last visited March 7, 2017).

[3] Department of Financial Services, *Bill Analysis for House Bill 107*, January 3, 2017, (on file with the Senate Criminal Justice Committee).

[4] The religious institution establishing such a columbarium must ensure that the columbarium is perpetually kept and maintained in a manner consistent with ch. 497, F.S. If the religious institution relocates, the religious institution must

- Family cemeteries of less than 2 acres, which do not sell burial spaces or burial merchandise;
- A mausoleum consisting of 2 acres or less, which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning;[5] and
- A columbarium consisting of 5 acres or less which is located on the main campus of a state university.[6]

Disinterment

Disinterment is the removal of a dead human body from earth interment or aboveground interment.[7] The board regulates the disinterment or transportation of human remains.[8] Funeral directors are also required to obtain written consent from a legally authorized person[9] or a court prior to the disinterment or reinterment of a dead human body.[10] A legally authorized person is defined as one of the following, listed in order of priority:

- The decedent, when written inter vivos authorizations and directions are provided by the decedent;
- The person designated by the decedent as authorized to direct disposition as listed on the decedent's United States Department of Defense Record of Emergency Data;
- The surviving spouse, unless the spouse has been arrested for committing an act of domestic violence against the deceased that resulted in or contributed to the death of the deceased;
- A son or daughter who is 18 years of age or older;
- A parent;
- A brother or sister who is 18 years of age or older;
- A grandchild who is 18 years of age or older;
- A grandparent; or
- Any person in the next degree of kinship.

The regulations for disinterment or reinterment or the requirement to obtain written consent prior do not apply to exempt cemeteries.

relocate all of the urns and remains placed in the columbarium, which were placed therein during its use by the religious institution. Section 497.260(1)(f), F.S.

[5] The religious institution establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with ch. 497, F.S., and limit its availability to members of the religious institution. The religious institution establishing such a mausoleum must have been incorporated for at least 25 years and have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum. Section 497.260(1)(h), F.S.

[6] Section 497.260(1), F.S. The university or university direct-support organization, which establishes the columbarium shall ensure that the columbarium is constructed and perpetually kept and maintained in a manner consistent with subsection (2) and ch. 497, F.S. Section 1000.21, F.S., defines a "state university" to include any branch campuses, centers, or other affiliates of the following institutions: The University of Florida, The Florida State University, The Florida Agricultural and Mechanical University, The University of South Florida, The Florida Atlantic University, The University of West Florida, The University of Central Florida, The University of North Florida, The Florida International University, The Florida Gulf Coast University, New College of Florida, The Florida Polytechnic University.

[7] Section 497.005(31), F.S.

[8] Section 497.384(2), F.S.

[9] Section 497.005(43), F.S.

[10] Section 497.384(3), F.S.

Offenses concerning graves

Section 872.02, F.S., provides criminal penalties for injuring or removing a tomb or monument or disturbing the contents of a grave or tomb. It is a third degree felony[11] for a person to willfully and knowingly destroy, mutilate, deface, injure, or remove any:

- Tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead;
- Fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure before mentioned; or
- Enclosure for the burial of the dead, or willfully destroy, mutilate, remove, cut, break, or injure any tree, shrub, or plant placed or being within any such enclosure.[12]

It is a second degree felony[13] if a person willfully and knowing disturbs the contents of a grave or tomb.

The above criminal penalties do not apply to:

- Any person acting under the direction or authority of the Division of Historical Resources of the Department of State;
- Cemeteries operating under ch. 497, F.S.; or
- Any person authorized by law to remove or disturb a tomb.

Cemeteries exempt under ch. 497, F.S., are not exempt from the criminal penalties of s. 872.02, F.S. If a person at an exempt cemetery were to disinter a dead human body at the request of a legally authorized person, he or she could be criminally charged.

III. Effect of Proposed Changes:

The bill amends s. 872.02, F.S., to provide an exception for cemeteries exempt under ch. 497, F.S., from the newly imposed criminal penalties.

The bill specifies that it a third degree felony if a person willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other approved structure or approved thing placed or designed for a memorial of the dead.

The bill also provides that anyone preforming routine maintenance and upkeep is exempt from the penalties associated with willfully destroying, mutilating, removing, cutting, breaking, or injuring any tree, shrub, or plant placed or being within any enclosure for the burial of the dead.

[11] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.
[12] Section 872.02(1), F.S.
[13] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.

The bill specifies that the second degree felony offense of disturbing the contents of a grave or tomb includes the conduct of excavation, exposure, movement, and removal of the contents of a grave or tomb.

The bill also allows a cemetery to remove or relocate the contents of a grave or tomb in response to a natural disaster.

An owner, officer, employee or agent of an exempt cemetery are exempt from the above stated criminal penalties and may relocate the contents of a grave or tomb after receiving a written and signed contract between the owner and a legally authorized person.

If a legally authorized person cannot be located after a reasonable search or if 75 years or more have elapsed since the date of entombment, interment, or inurnment, then public notice must be posted. A public notice must be published once a week for four consecutive weeks in a newspaper of general circulation within the county in which the cemetery is located.

The public notice must contain the:
- Name of the cemetery;
- Name, address, and telephone number of the representative of the cemetery with whom written objections may be filed;
- Reason for the relocation of the contents of the grave or tomb;
- Names of the human remains to be relocated;
- Approximate date of the initial entombment, interment or inurnment;
- Proposed site of relocation; and
- Proposed date of relocation, which may not be less than 30 days after the last publication.

If a legally authorized person does not object within 30 days from the last date of publication of the public notice, the cemetery may proceed with the relocation.

If a legally authorized person refuses to sign a contract or objects to the relocation a public hearing must be held before the city council if the cemetery is in a municipality. If the cemetery is not in a municipality the hearing must be held before the appropriate county commission. The city council or county commission has sole authority to grant a request for relocation for the contents of such graves or tombs.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent that the cities or counties have to hold and participate in hearings or post a public notice this will likely cost the cities and counties money. 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.[14, 15, 16]

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 may have a negative fiscal impact on privately owned exempt cemeteries. The bill requires exempt cemeteries to publicly notice the plan to relocate the contents of a grave or tomb. If the relocation is objected to, a hearing is required. The notice and hearing process could cause privately owned exempt cemeteries to incur costs.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on March 2, 2017, and determined that the bill, as originally filed, will insignificantly increase state prison beds (an increase of 10 or fewer prison beds).

The bill may have a negative fiscal impact on county or city owned exempt cemeteries. The bill requires exempt cemeteries to publicly notice the plan to relocate the contents of a grave or tomb. If the relocation is objected to, a hearing is required. The notice and hearing process and holding the hearings could cause exempt cemeteries owned by cities or counties to incur costs.

VI. Technical Deficiencies:

None.

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[14] FLA. CONST. art. VII, s. 18(d).

[15] 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).

[16] 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).

VII. Related Issues:

The bill does not include any criteria for the city councils or county commissions to use in the relocation disputes or any recourse for the councils or commissions to provide if they deny a relocation.

VIII. Statutes Affected:

This bill substantially amends section 872.02 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 Criminal and Civil Justice on April 13, 2017:
The committee substitute:

- Clarifies that an exempt cemetery may have a public hearing, as provided in subsection (6), if a legally authorized person refuses to sign a contract with the owner exempt cemetery, as provided in subsection (5)(a); and
- Adds a reference to subsection (5) in subsection (6) to clarify when a public hearing is authorized.

CS by Criminal Justice on March 13, 2017:
The committee substitute:

- Deletes proposed changes to the terms "tomb" and "memorial";
- Deletes proposed changes to the penalties for injuring or removing a tomb or monument;
- Clarifies that any cemetery may remove or relocate the contents of a grave or tomb as a response to a natural disaster;
- Allows an exempt cemetery to relocate the contents of a grave or tomb if there is a signed contract between the cemetery owner and a legally authorized person;
- Allows an exempt cemetery to publicly notice a relocation if a legally authorized person cannot be found after a reasonable search;
- Revises hearing requirements; and
- Changes the effective date.

B. Amendments:

None.

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576-03819-17

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

A bill to be entitled

An act relating to criminal offenses involving tombs and memorials; amending s. 872.02, F.S.; providing that a person who willfully and knowingly excavates, exposes, moves, or removes the contents of a grave or tomb commits a felony; revising applicability; authorizing an owner, officer, employee, or agent of specified cemeteries to relocate the contents of a grave or tomb, subject to certain conditions; providing an effective date.

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

Section 1. Section 872.02, Florida Statutes, is amended to read

872.02 Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.—

(1) A person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 if he or she:

(a) ~~who~~ Willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other approved structure or approved thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb,

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monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure before mentioned, or for any enclosure for the burial of the dead~~;~~ or

(b) Willfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant placed or being within any such enclosure, except for a person performing routine maintenance and upkeep ~~commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

(2) A person who willfully and knowingly excavates, exposes, moves, removes, or otherwise disturbs the contents of a ~~tomb or~~ grave or tomb commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does ~~shall~~ not apply to any person acting under the direction or authority of the Division of Historical Resources of the Department of State, to cemeteries operating under chapter 497, any cemeteries removing or relocating the contents of a grave or tomb as a response to a natural disaster, or to any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents, as described in subsection (1).

(4) For purposes of this section, the term "tomb" includes any mausoleum, columbarium, or belowground crypt.

(5) Notwithstanding subsections (1) and (2), an owner, officer, employee, or agent of a cemetery exempt from regulation pursuant to s. 497.260 may relocate the contents of a grave or tomb:

(a) After receiving a written and signed contract between the owner and a legally authorized person as defined in s.

497.005(43).

(b) If a legally authorized person cannot be located after a reasonable search or if 75 years or more have elapsed since the date of entombment, interment, or inurnment, then public notice must be posted. The public notice must be published once a week for 4 consecutive weeks in a newspaper of general circulation in the county where the cemetery is located. The public notice must contain the name of the cemetery; the name, address, and telephone number of the cemetery representative with whom objections may be filed; the reason for relocation of the contents of the graves or tombs; the names of the human remains to be relocated; the approximate date of the initial entombment, interment, or inurnment; the proposed site of relocation; and the proposed date of relocation. The proposed date of relocation may not be less than 30 days from last date of publication. If no objection from a legally authorized person is received within 30 days from the last date of publication of the public notice, the cemetery may proceed with relocation.

(6) If a legally authorized person refuses to sign a contract, as provided in (5)(a), or if a legally authorized person objects, as provided in (5)(b), a public hearing shall be held before the county commission of the county where the cemetery is located, or the city council, if the cemetery is located in a municipality, and the county commission or the city council shall have sole authority to grant a request for relocation of the contents of such graves or tombs.

Section 2. 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 844
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Simmons and others
SUBJECT:	Criminal Offenses Involving Tombs and Memorials
DATE:	April 26, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	**Fav/CS**
2.	McAuliffe	Sadberry	ACJ	**Recommend: Fav/CS**
3.	McAuliffe	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 844 provides an exception for cemeteries exempt under chapter 497, Florida Statutes, from the criminal penalties in section 872.02, Florida Statutes.

Currently, under section 872.02, Florida Statutes, it is a third degree felony to willfully and knowingly damage or remove a tomb, monument, or other specified structure and a second degree felony to willfully and knowingly disturb the contents of a grave or tomb. The penalties do not apply to certain persons, like cemeteries operating under chapter 497, Florida Statutes, (the Florida Funeral, Cemetery, and Consumer Services Act). However, there are cemeteries that are exempt from the regulation and licensing requirements of chapter 497, Florida Statutes, and these cemeteries are not exempt from the criminal penalties of section 872.02, Florida Statutes. If a person at such a cemetery were to disinter a dead human body at the request of a legally authorized person, he or she could be criminally charged under section 872.02, Florida Statutes.

The bill provides an exception for cemeteries exempt under chapter 497, Florida Statutes, from the criminal penalties in section 872.02, Florida Statutes. The bill also specifies the criteria that an exempt cemetery must meet to relocate the contents of a grave or tomb. If a legally authorized person refuses to sign a contract or objects to the relocation a public hearing must be held before the applicable city council or county commission.

The bill also clarifies elements of the offense of disturbing the contents of a grave or tomb.

The Criminal Justice Impact Conference met on March 2, 2017, and determined that the bill, as originally filed, will insignificantly increase state prison beds. The bill may have a negative fiscal impact on both privately owned exempt cemeteries and county and city owned exempt cemeteries. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

II. Present Situation:

Cemeteries

A cemetery is a place dedicated to, used, or intended to be used for the permanent interment of human remains or cremated remains. A cemetery can be any combination of one or more of the following structures or places:

- Land or earth interment;
- Mausoleum, vault, or crypt interment; or
- Columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains.[1]

Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act, specifies that the Board of Funeral, Cemetery and Consumer Services (board) oversee the regulation and licensing of cemeteries. Section 497.260, F.S., exempts numerous types of cemeteries from these regulation and licensing requirements. Currently, there are 171 licensed cemeteries[2] and anywhere from 3500-5000 cemeteries exempt from licensing and regulation in Florida.[3]

Exempt cemeteries include:

- Religious institution cemeteries of less than 5 acres, which provide only single-level ground burial;
- County and municipal cemeteries;
- Community and nonprofit association cemeteries, which provide only single-level ground burial and do not sell burial spaces or burial merchandise;
- Cemeteries owned and operated or dedicated by a religious institution prior to June 23, 1976;
- Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent;
- A columbarium consisting of less than one-half acre, which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning;[4]

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[1] Section 497.005(13), F.S.

[2] Division of Funeral, Cemetery and Consumer Services, *Who We Regulate, Regulated Categories and Number of Licensees*, August 19, 2016, available at http://www.myfloridacfo.com/Division/FuneralCemetery/About/Whoweregulate.htm (last visited March 7, 2017).

[3] Department of Financial Services, *Bill Analysis for House Bill 107*, January 3, 2017, (on file with the Senate Criminal Justice Committee).

[4] The religious institution establishing such a columbarium must ensure that the columbarium is perpetually kept and maintained in a manner consistent with ch. 497, F.S. If the religious institution relocates, the religious institution must

- Family cemeteries of less than 2 acres, which do not sell burial spaces or burial merchandise;
- A mausoleum consisting of 2 acres or less, which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning;[5] and
- A columbarium consisting of 5 acres or less which is located on the main campus of a state university.[6]

Disinterment

Disinterment is the removal of a dead human body from earth interment or aboveground interment.[7] The board regulates the disinterment or transportation of human remains.[8] Funeral directors are also required to obtain written consent from a legally authorized person[9] or a court prior to the disinterment or reinterment of a dead human body.[10] A legally authorized person is defined as one of the following, listed in order of priority:

- The decedent, when written inter vivos authorizations and directions are provided by the decedent;
- The person designated by the decedent as authorized to direct disposition as listed on the decedent's United States Department of Defense Record of Emergency Data;
- The surviving spouse, unless the spouse has been arrested for committing an act of domestic violence against the deceased that resulted in or contributed to the death of the deceased;
- A son or daughter who is 18 years of age or older;
- A parent;
- A brother or sister who is 18 years of age or older;
- A grandchild who is 18 years of age or older;
- A grandparent; or
- Any person in the next degree of kinship.

The regulations for disinterment or reinterment or the requirement to obtain written consent prior do not apply to exempt cemeteries.

relocate all of the urns and remains placed in the columbarium, which were placed therein during its use by the religious institution. Section 497.260(1)(f), F.S.

[5] The religious institution establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with ch. 497, F.S., and limit its availability to members of the religious institution. The religious institution establishing such a mausoleum must have been incorporated for at least 25 years and have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum. Section 497.260(1)(h), F.S.

[6] Section 497.260(1), F.S. The university or university direct-support organization, which establishes the columbarium shall ensure that the columbarium is constructed and perpetually kept and maintained in a manner consistent with subsection (2) and ch. 497, F.S. Section 1000.21, F.S., defines a "state university" to include any branch campuses, centers, or other affiliates of the following institutions: The University of Florida, The Florida State University, The Florida Agricultural and Mechanical University, The University of South Florida, The Florida Atlantic University, The University of West Florida, The University of Central Florida, The University of North Florida, The Florida International University, The Florida Gulf Coast University, New College of Florida, The Florida Polytechnic University.

[7] Section 497.005(31), F.S.

[8] Section 497.384(2), F.S.

[9] Section 497.005(43), F.S.

[10] Section 497.384(3), F.S.

Offenses concerning graves

Section 872.02, F.S., provides criminal penalties for injuring or removing a tomb or monument or disturbing the contents of a grave or tomb. It is a third degree felony[11] for a person to willfully and knowingly destroy, mutilate, deface, injure, or remove any:

- Tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead;
- Fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure before mentioned; or
- Enclosure for the burial of the dead, or willfully destroy, mutilate, remove, cut, break, or injure any tree, shrub, or plant placed or being within any such enclosure.[12]

It is a second degree felony[13] if a person willfully and knowing disturbs the contents of a grave or tomb.

The above criminal penalties do not apply to:

- Any person acting under the direction or authority of the Division of Historical Resources of the Department of State;
- Cemeteries operating under ch. 497, F.S.; or
- Any person authorized by law to remove or disturb a tomb.

Cemeteries exempt under ch. 497, F.S., are not exempt from the criminal penalties of s. 872.02, F.S. If a person at an exempt cemetery were to disinter a dead human body at the request of a legally authorized person, he or she could be criminally charged.

III. Effect of Proposed Changes:

The bill amends s. 872.02, F.S., to provide an exception for cemeteries exempt under ch. 497, F.S., from the newly imposed criminal penalties.

The bill specifies that it a third degree felony if a person willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other approved structure or approved thing placed or designed for a memorial of the dead.

The bill also provides that anyone preforming routine maintenance and upkeep is exempt from the penalties associated with willfully destroying, mutilating, removing, cutting, breaking, or injuring any tree, shrub, or plant placed or being within any enclosure for the burial of the dead.

[11] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.
[12] Section 872.02(1), F.S.
[13] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.

The bill specifies that the second degree felony offense of disturbing the contents of a grave or tomb includes the conduct of excavation, exposure, movement, and removal of the contents of a grave or tomb.

The bill also allows a cemetery to remove or relocate the contents of a grave or tomb in response to a natural disaster.

An owner, officer, employee or agent of an exempt cemetery are exempt from the above stated criminal penalties and may relocate the contents of a grave or tomb after receiving a written and signed contract between the owner and a legally authorized person.

If a legally authorized person cannot be located after a reasonable search or if 75 years or more have elapsed since the date of entombment, interment, or inurnment, then public notice must be posted. A public notice must be published once a week for four consecutive weeks in a newspaper of general circulation within the county in which the cemetery is located.

The public notice must contain the:
- Name of the cemetery;
- Name, address, and telephone number of the representative of the cemetery with whom written objections may be filed;
- Reason for the relocation of the contents of the grave or tomb;
- Names of the human remains to be relocated;
- Approximate date of the initial entombment, interment or inurnment;
- Proposed site of relocation; and
- Proposed date of relocation, which may not be less than 30 days after the last publication.

If a legally authorized person does not object within 30 days from the last date of publication of the public notice, the cemetery may proceed with the relocation.

If a legally authorized person refuses to sign a contract or objects to the relocation a public hearing must be held before the city council if the cemetery is in a municipality. If the cemetery is not in a municipality the hearing must be held before the appropriate county commission. The city council or county commission has sole authority to grant a request for relocation for the contents of such graves or tombs.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent that the cities or counties have to hold and participate in hearings or post a public notice this will likely cost the cities and counties money. 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.[14, 15, 16]

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 may have a negative fiscal impact on privately owned exempt cemeteries. The bill requires exempt cemeteries to publicly notice the plan to relocate the contents of a grave or tomb. If the relocation is objected to, a hearing is required. The notice and hearing process could cause privately owned exempt cemeteries to incur costs.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on March 2, 2017, and determined that the bill, as originally filed, will insignificantly increase state prison beds (an increase of 10 or fewer prison beds).

The bill may have a negative fiscal impact on county or city owned exempt cemeteries. The bill requires exempt cemeteries to publicly notice the plan to relocate the contents of a grave or tomb. If the relocation is objected to, a hearing is required. The notice and hearing process and holding the hearings could cause exempt cemeteries owned by cities or counties to incur costs.

VI. Technical Deficiencies:

None.

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[14] FLA. CONST. art. VII, s. 18(d).

[15] 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).

[16] 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).

VII. Related Issues:

The bill does not include any criteria for the city councils or county commissions to use in the relocation disputes or any recourse for the councils or commissions to provide if they deny a relocation.

VIII. Statutes Affected:

This bill substantially amends section 872.02 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 25, 2017:
The committee substitute:

- Clarifies that an exempt cemetery may have a public hearing, as provided in subsection (6), if a legally authorized person refuses to sign a contract with the owner exempt cemetery, as provided in subsection (5)(a); and
- Adds a reference to subsection (5) in subsection (6) to clarify when a public hearing is authorized.

CS by Criminal Justice on March 13, 2017:
The committee substitute:

- Deletes proposed changes to the terms "tomb" and "memorial";
- Deletes proposed changes to the penalties for injuring or removing a tomb or monument;
- Clarifies that any cemetery may remove or relocate the contents of a grave or tomb as a response to a natural disaster;
- Allows an exempt cemetery to relocate the contents of a grave or tomb if there is a signed contract between the cemetery owner and a legally authorized person;
- Allows an exempt cemetery to publicly notice a relocation if a legally authorized person cannot be found after a reasonable search;
- Revises hearing requirements; and
- Changes the effective date.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senators Simmons and Baxley

591-02378B-17 2017844c1

A bill to be entitled

An act relating to criminal offenses involving tombs and memorials; amending s. 872.02, F.S.; providing that a person who willfully and knowingly excavates, exposes, moves, or removes the contents of a grave or tomb commits a felony; revising applicability; authorizing an owner, officer, employee, or agent of specified cemeteries to relocate the contents of a grave or tomb, subject to certain conditions; providing an effective date.

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

Section 1. Section 872.02, Florida Statutes, is amended to read

872.02 Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties.—

(1) A person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 if he or she:

(a) ~~who~~ Willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other approved structure or approved thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial

591-02378B-17 2017844c1

artifacts, or other structure before mentioned, or for any enclosure for the burial of the dead~~;~~ or

(b) Willfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant placed or being within any such enclosure, except for a person performing routine maintenance and upkeep ~~commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

(2) A person who willfully and knowingly excavates, exposes, moves, removes, or otherwise disturbs the contents of a ~~tomb or~~ grave or tomb commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) This section does ~~shall~~ not apply to any person acting under the direction or authority of the Division of Historical Resources of the Department of State, to cemeteries operating under chapter 497, any cemeteries removing or relocating the contents of a grave or tomb as a response to a natural disaster, or to any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents, as described in subsection (1).

(4) For purposes of this section, the term "tomb" includes any mausoleum, columbarium, or belowground crypt.

(5) Notwithstanding subsections (1) and (2), an owner, officer, employee, or agent of a cemetery exempt from regulation pursuant to s. 497.260 may relocate the contents of a grave or tomb:

(a) After receiving a written and signed contract between the owner and a legally authorized person as defined in s. 497.005(43).

(b) If a legally authorized person cannot be located after

a reasonable search or if 75 years or more have elapsed since the date of entombment, interment, or inurnment, then public notice must be posted. The public notice must be published once a week for 4 consecutive weeks in a newspaper of general circulation in the county where the cemetery is located. The public notice must contain the name of the cemetery; the name, address, and telephone number of the cemetery representative with whom objections may be filed; the reason for relocation of the contents of the graves or tombs; the names of the human remains to be relocated; the approximate date of the initial entombment, interment, or inurnment; the proposed site of relocation; and the proposed date of relocation. The proposed date of relocation may not be less than 30 days from last date of publication. If no objection from a legally authorized person is received within 30 days from the last date of publication of the public notice, the cemetery may proceed with relocation.

(6) If a legally authorized person objects, a public hearing shall be held before the county commission of the county where the cemetery is located, or the city council, if the cemetery is located in a municipality, and the county commission or the city council shall have sole authority to grant a request for relocation of the contents of such graves or tombs.

Section 2. This act shall take effect October 1, 2017.

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 844**, relating to Criminal Offenses Involving Tombs and Memorials, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

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

CS/SB 844
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Tombs + Memorials + Cemeteries

Name Bob Boyd

Job Title Atty For Archdiocese of Miami

Address 660 E. Jefferson St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-412-0306

Email bboyd@ssclawfirm.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Archdiocese of Miami, Catholic Cemeteries

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:	SB 892
INTRODUCER:	Senator Simmons
SUBJECT:	Youthful Offenders
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	**Favorable**
2.	McAuliffe	Sadberry	ACJ	**Recommend: Favorable**
3.	McAuliffe	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 892 allows the court to impose a sentence as a youthful offender if a person committed a felony *before they turned 21 years of age*. Current law requires the person be under 21 at the time of sentencing.

The Criminal Justice Impact Conference (CJIC) has not determined the impact of the bill. However, the Criminal Justice Impact Conference (CJIC) has completed a preliminary estimate on the impact of the bill and has concluded that it will have no impact on state prison beds.

The bill is effective July 1, 2017.

II. Present Situation:

Florida provides an alternative sentencing scheme for certain youthful offenders convicted of a felony. A court may impose a sentence as a youthful offender in circuit court if the person:

- Was found guilty of, or plead nolo contendere or guilty to a felony that is not a capital or life felony;
- Is younger than 21 years of age at the time the sentence is imposed; and
- Has not previously been sentenced as a youthful offender.[1]

[1] Section 958.04(1), F.S.

If a court chooses to sentence a person as a youthful offender, it must sentence the youthful offender to any combination of the following penalties:

- Place the youthful offender on probation or in a community control program for no more than 6 years. Under this sentencing option, the court can choose to withhold adjudication of guilt or impose adjudication of guilt.[2]
- Incarcerate the youthful offender for no more than a year. The incarceration must take place in a specified facility and is a condition of probation or community control.
- Incarcerate the youthful offender for a specified period followed by a term of probation or community control. If the incarceration is in specified Department of Corrections (DOC) facilities it cannot be for less than 1 year or longer than 4 years. The period of incarceration and probation or community control cannot exceed 6 years.
- Incarcerate the youthful offender for no more than 6 years.[3]

III. Effect of Proposed Changes:

The bill allows the court to impose a sentence as a youthful offender if a person committed a felony *before they turned 21 years of age*. Current law requires the person be under 21 at the time of sentencing.

A larger group of people will now be eligible for a youthful offender sentence.

The bill reenacts ss. 950.04(5), 958.045(8)(a), and 985.565, F.S., to incorporate changes made by the bill.

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.

[2] Section 958.04(2)(a), F.S.

[3] Any of these sentencing combinations cannot exceed the maximum sentence for the offence for which the youthful offender was found guilty. If a youthful offender is sentenced to a period of incarceration, the court must adjudicate the youthful offender guilty. Section 958.04(2), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not determined the impact of the bill. However, CJIC has completed a preliminary estimate on the impact of the bill and has concluded that it will have no impact on state prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 958.04 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 958.03, 958.045, and 985.565.

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 Simmons

9-00516-17 2017892__

A bill to be entitled

An act relating to youthful offenders; amending s. 958.04, F.S.; revising the criteria allowing a court to sentence as a youthful offender a person who is found guilty of, or who pled nolo contendere or guilty to, committing a felony before the person turned 21 years of age; reenacting ss. 958.03(5), 958.045(8)(a), and 985.565(4)(c), F.S., relating to the definition of "youthful offender," the youthful offender basic training program, and classification as a youth offender, respectively, to incorporate the amendment made to s. 958.04, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1) of section 958.04, Florida Statutes, is amended to read:

958.04 Judicial disposition of youthful offenders.—

(1) The court may sentence as a youthful offender any person:

(a) Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 985;

(b) Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is, under the laws of this state, a felony if such crime was committed before the defendant turned 21 years of age ~~the offender is younger than 21 years of age at the time~~

9-00516-17 2017892__

~~sentence is imposed~~; and

(c) Who has not previously been classified as a youthful offender under the provisions of this act; however, a person who has been found guilty of a capital or life felony may not be sentenced as a youthful offender under this act.

Section 2. For the purpose of incorporating the amendment made by this act to section 958.04, Florida Statutes, in a reference thereto, subsection (5) of section 958.03, Florida Statutes, is reenacted to read:

958.03 Definitions.—As used in this act:

(5) "Youthful offender" means any person who is sentenced as such by the court or is classified as such by the department pursuant to s. 958.04.

Section 3. For the purpose of incorporating the amendment made by this act to section 958.04, Florida Statutes, in a reference thereto, paragraph (a) of subsection (8) of section 958.045, Florida Statutes, is reenacted to read:

958.045 Youthful offender basic training program.—

(8)(a) The Assistant Secretary for Youthful Offenders shall continuously screen all institutions, facilities, and programs for any inmate who meets the eligibility requirements for youthful offender designation specified in s. 958.04, whose age does not exceed 24 years. The department may classify and assign as a youthful offender any inmate who meets the criteria of s. 958.04.

Section 4. For the purpose of incorporating the amendment made by this act to section 958.04, Florida Statutes, in a reference thereto, paragraph (c) of subsection (4) of section 985.565, Florida Statutes, is reenacted to read:

985.565 Sentencing powers; procedures; alternatives for juveniles prosecuted as adults.—

(4) SENTENCING ALTERNATIVES.—

(c) *Adult sanctions upon failure of juvenile sanctions.*—If a child proves not to be suitable to a commitment program, juvenile probation program, or treatment program under paragraph (b), the department shall provide the sentencing court with a written report outlining the basis for its objections to the juvenile sanction and shall simultaneously provide a copy of the report to the state attorney and the defense counsel. The department shall schedule a hearing within 30 days. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any sentence which it may lawfully impose, giving credit for all time spent by the child in the department. The court may also classify the child as a youthful offender under s. 958.04, if appropriate. For purposes of this paragraph, a child may be found not suitable to a commitment program, community control program, or treatment program under paragraph (b) if the child commits a new violation of law while under juvenile sanctions, if the child commits any other violation of the conditions of juvenile sanctions, or if the child's actions are otherwise determined by the court to demonstrate a failure of juvenile sanctions.

It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 985.534.

Section 5. 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 22, 2017

I respectfully request that **Senate Bill 892**, relating to Youthful Offenders, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Apr 17
Meeting Date

892
Bill Number (if applicable)

Topic Youthful Offenders

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall 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 Fla. Smart Justice 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

APPEARANCE RECORD

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

April 25, 2017
Meeting Date

892
Bill Number (if applicable)

Topic Youthful Offenders

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street
Street

Phone 850-488-6850

Tallahassee FL 32301
City *State* *Zip*

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, Inc.

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

4-25-17
Meeting Date

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

892
Bill Number (if applicable)

Topic Youthful Offender

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Constituency Services

Address 404 S. Magnolia DR.
Street

Tallahassee FL
City *State* *Zip*

Phone 850-425-2600

Email cmackin@iamforkids.org

Speaking: ☐ For ☐ Against ☐ Information ☒ Waive ~~Speaking~~: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Children's Campaign

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

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 894
INTRODUCER:	Senator Simmons
SUBJECT:	Arrest Warrants for State Prisoners
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	**Favorable**
2.	Parks	Cibula	JU	**Favorable**
3.	Harkness	Hansen	AP	**Favorable**

I. Summary:

SB 894 creates procedures to help state prisoners serve out sentences for violations of probation or community control while in prison for other crimes.[1] If a prisoner has an unserved warrant for arrest issued by another county for a violation of probation, the bill allows the prisoner to petition for a status hearing, where a state attorney informs the circuit court whether the prisoner does in fact have an unserved warrant for the violation.

If the prisoner has an unserved warrant, the bill provides that the court must order the state attorney to submit an order to send the prisoner to the issuing county's jail. The order must then be sent from the court to the local county sheriff to execute the prisoner's transport to the county that issued the probation warrant.

The bill has an indeterminate impact on state and local expenditures but will likely reduce local costs associated with intercounty prisoner transportation.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Sometimes a prisoner's arrest or imprisonment in one county also violates his probation in another county. The Department of Corrections estimates that, at any given time, approximately 20 state prisoners have unserved probation warrants.[2]

It is difficult for prisoners in this situation to serve their time for violating probation concurrently with their existing sentences, because their probation warrants have not been served. A state

[1] "Probation" should be read to mean "probation and/or community control" for the remainder of this analysis, as the two mechanisms are treated the same by the caselaw, the existing Florida Statutes, and this bill.
[2] Dep't of Corrections, *Agency Analysis to HB 1091* (2017).

prisoner has no right to force a hearing on a probation violation.[3] Florida appellate courts have held that a probationer is only entitled to a hearing on a violation after he or she has been arrested and returned to the county alleging the violation.[4]

When a prisoner's arrest in one county violates his or her probation in another county, the latter county may file a detainer. A detainer instructs the holding county to either (a) hold the prisoner for the county filing the detainer, or (b) inform the county filing the detainer when the prisoner is about to be released.[5]

The Florida Supreme Court has ruled that a detainer generally does not result in accrual of time served for the probation violation because a detainer is not the same as an arrest warrant.[6] As a result, a prisoner can leave prison in one county, then be arrested for violating his or her probation in another county.

The Second District Court of Appeal has ruled that a trial court has no duty to conduct hearings on warrants for probation violations, especially when the defendant is not imprisoned in the same county as the court.[7]

III. Effect of Proposed Changes:

Probation

The bill creates new procedures to be used by a prisoner who has an unserved warrant for arrest due to a probation violation. Such a prisoner may file a notice of an unserved warrant in the circuit court for the county that he or she claims issued the probation warrant.[8] The prisoner must notify the state attorney in the county that issued the warrant, and the state attorney must then schedule a "status hearing" regarding the prisoner within 90 days. The status hearing is attended only by the state attorney and the judge; the prisoner may not be transported to the hearing.

During the hearing, the state attorney informs the judge whether the prisoner has an unserved warrant for a probation violation. If there is such a warrant, the judge must order the state attorney to submit a transport order for the prisoner within 30 days. The transport order concerns the transportation of the prisoner from the holding county to the county that issued the probation warrant; the order is to be carried out by the sheriff of the county that issued the warrant.

The intent of the new procedures is to resolve unserved warrants prior to a prisoner's release, which obviates the need to transport the prisoner to the county that issued the warrant. In some cases, the state attorney may have no interest in acting on the warrant and this new process provides an opportunity for the state attorney to have the warrant dismissed. According to the Department of Corrections, the new procedures will permit the prisoners who have their warrants

[3] *Chapman v. State*, 910 So. 2d 940, 942 (Fla. 5th D.C.A. 2005) (citation omitted).
[4] *Bonner v. State*, 866 So. 2d 163, 164-65 (Fla. 5th D.C.A. 2004).
[5] *Id*. at 164.
[6] *Gethers v. State*, 838 So. 2d 504, 508 (Fla. 2003). The Court said time would only accrue in a situation where the holding county was only holding the probationer because of the detainer.
[7] *Norman v. State*, 900 So. 2d 702, 703 (Fla. 2d D.C.A. 2005) (rejecting defendant's mandamus petition to compel a hearing).
[8] Notably, the bill provides no means of informing prisoners whether they have violated their probations.

dismissed to participate in transitional and reintegration programs, which may improve offender post-release outcomes.[9]

Effective Date

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill is not affect by the restrictions in the State Constitution which limit the Legislature's authority to impose mandates on counties and municipalities because the bill relates to criminal laws.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

There is no provision for the prisoner or his counsel to attend the status hearing. However, the bill does not close the hearing.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may get prisoners back into the workforce more efficiently. Many transitional programs are not open to prisoners with open warrants, so resolving the warrants may help these prisoners re-integrate into society.[10]

C. Government Sector Impact:

The bill's fiscal impact to the state and counties is indeterminate but will likely reduce state and local costs. The bill will decrease the number of unserved warrants thereby reducing the number of instances in which a county must hold and then transport an

[9] Dep't of Corrections, *Agency Analysis to HB 1091* (2017).
[10] *Id.*

offender who has completed a prison sentence to another county to resolve a warrant. This will likely reduce a county's prisoner transportation costs.

While the bill's provision requiring status hearings will marginally increase the workloads of state courts and state attorneys, it is anticipated that there will be fewer unserved warrants for state attorneys to address when inmates complete their sentences.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 948.33, 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 Simmons

9-00517-17 2017894__

A bill to be entitled

An act relating to arrest warrants for state prisoners; creating s. 948.33, F.S.; authorizing a prisoner in a state prison who has an unserved violation of probation or an unserved violation of community control warrant to file a notice of unserved warrant in the circuit court where the warrant was issued; requiring the prisoner to serve notice on the state attorney; requiring the state attorney to schedule a status hearing within a certain time after receiving notice; specifying procedures and requirements for the status hearing; providing for prosecution of the violation; requiring the court to send the order to the county sheriff; providing an effective date.

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

Section 1. Section 948.33, Florida Statutes, is created to read:

948.33 Prosecution for violation of probation and community control arrest warrants of state prisoners.—A prisoner in a state prison in this state who has an unserved violation of probation or an unserved violation of community control warrant for his or her arrest may file a state prisoner's notice of unserved warrant in the circuit court of the judicial circuit in which the unserved warrant was issued. The prisoner must serve notice on the state attorney of that circuit and the state attorney must schedule the notice for a status hearing before

9-00517-17 2017894__

the circuit court within 90 days after receipt of the notice. The state prisoner may not be transported to the status hearing. At the status hearing the state attorney shall inform the court whether there is an unserved violation of probation or an unserved violation of community control warrant for the arrest of the state prisoner. If a warrant for either violation exists, the court must order the state attorney to submit to the court within 30 days after the status hearing an order to transport the state prisoner to the county jail of the county that issued the warrant for prosecution of the violation and the court shall send the order to the county sheriff for execution.

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: March 23, 2017

I respectfully request that **Senate Bill 894**, relating to Arrest Warrants for State Prisoners, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 25, 2017
Meeting Date

894
Bill Number (if applicable)

Topic Arrest Warrants for State Prisoners

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street
Street

Phone 850-488-6850

Tallahassee FL 32301
City *State* *Zip*

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, Inc.

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)

25 Apr 17
Meeting Date

894
Bill Number (if applicable)

Topic Arrest Warrants - State Prisoners

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall 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 Fla. Smart Justice Alliance

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

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 1050
INTRODUCER:	Senator Simmons
SUBJECT:	Memory Disorder Clinics
DATE:	April 24 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Forbes	Williams	AHS	**Recommend: Favorable**
3.	Forbes	Hansen	AP	**Favorable**

I. Summary:

SB 1050 establishes a memory disorder clinic at Florida Hospital in Orange County.

This bill does not impact state revenues or expenditures

The bill is effective July 1, 2017.

II. Present Situation:

Alzheimer's Disease

Alzheimer's disease is a degenerative brain disease and the most common cause of dementia.[1] It accounts for 60 to 80 percent of dementia cases.[2] An estimated 5.5 million Americans are living with the disease in 2017, including 1 in 10 people aged 65 and older. For Florida, the number is estimated to be 520,000 for 2017 and it is projected to grow to 720,000 by 2025, a growth rate of 38.5 percent.[3]

Dementia is a syndrome of the disease and is actually a group of symptoms that has a number of causes that include difficulties with memory, language, problem-solving, and other cognitive skills that affect a person's ability to perform everyday activities.[4] In Alzheimer's patients, these difficulties occur because of brain abnormalities. The nerve cells or neurons that are involved with cognitive brain function have been damaged or destroyed causing a loss of connection

[1] Alzheimer's Association, *2017 Alzheimer's Disease Facts and Figures,* http://www.alz.org/documents_custom/2017-facts-and-figures.pdf, p. 5, (last visited Mar. 8, 2017).
[2] Alzheimer's Association, *About Alzheimer's and Dementia,* http://www.alz.org/research/science/alzheimers_research.asp (last visited Mar. 9, 2017).
[3] *Id.* at 21.
[4] *Id.* at 5.

among brain cells.[5] Eventually, those with Alzheimer's disease become bed bound and require around the clock care. The disease is fatal and there is currently no cure.

The brains of individuals with Alzheimer's show inflammation, dramatic shrinkage from cell loss, and widespread debris from dead and dying neurons.[6] Other changes associated with Alzheimer's and other dementias include:

- Memory loss that disrupts daily life;
- Challenges in planning or solving problems;
- Difficulty completing familiar tasks;
- Confusion with time or place;
- Trouble understanding visual images and spatial relationships;
- New problems with words in speaking or writing;
- Misplacing things and losing the ability to retrace steps;
- Decreased or poor judgement;
- Withdrawal from work or social activities; or
- Change in mood and personality.[7]

For those living with Alzheimer's, management of the disease can lead to an improved quality of life. Active management of the disease may include:

- Appropriate use of available treatment options;
- Effective management of coexisting conditions;
- Coordination of care among physicians, other health care providers and lay caregivers;
- Participation in activities that are meaningful and bring purpose to one's life; and
- Have opportunities to connect with others living with dementia; support groups and supportive services.[8]

Florida Alzheimer's Disease Initiatives

Florida's Alzheimer's Disease Initiative (ADI) was created by the 1985 Legislature to meet the changing needs of individuals with Alzheimer's and similar memory disorders and their families. The Florida Department of Elder Affairs (department) coordinates and develops policy in conjunction with a 10-member advisory committee appointed by the Governor for the initiative. The program includes four components:

- Supportive services which include counseling, consumable medical supplies, and respite caregiver relief;
- Memory Disorder Clinics that provide diagnosis, research, treatment, education, and referrals;
- Model day care programs to test new care alternatives; and
- A brain bank to support research.[9]

[5] *Id.*
[6] *Id.*
[7] *Id.* at 9.
[8] *Id.* at 14.
[9] Dep't of Elder Affairs, *Alzheimer's Disease Initiative,* http://elderaffairs.state.fl.us/doea/alz.php (last visited Mar. 9, 2017).

The ADI includes in-home, facility-based (usually at adult day care centers), emergency, and extended care (up to 30 days) for caregivers who serve patients with memory disorders.[10] During FY 2014-2015, 2,652 individuals received respite and support services, including case management, specialized medical equipment, services, and supplies, and caregiver counseling, support groups, and training.[11]

The 2016-2017 General Appropriations Act includes $22,139,517 from the General Revenue Fund for the ADI services.[12] The appropriated funds are allocated to each of the Area Agencies on Aging to fund providers of model day care and respite care programs based on each county's population age 75 and older and probable number of Alzheimer's cases. Additional Alzheimer disease services are administered through contracts with designated Memory Disorder Clinics and the Florida Brain Banks. Remaining funds are allocated to local funding initiatives based on legislative direction in the General Appropriations Act.[13]

Participants in the ADI program are assessed co-payments and other partial payment amounts based on their ability pay and in accordance with Rule 58C-1.007, F.A.C. The co-pay schedule is set on a sliding scale, not to exceed 3 percent of an individual's monthly income in 2016.[14] Provider agencies are responsible for the collection of fees for ADI services and report their collections annually to the department.[15]

Respite for Caregiver Relief

Respite care programs for caregivers are established in all 67 of Florida's counties.[16] Many Alzheimer's patients require around the clock care, especially in the late stages of the disease. Caregivers may also receive supportive services such as training and support groups, counseling, consumable medical supplies, and nutritional supplements.

Memory Disorder Clinics

There are 15 state-funded Memory Disorder Clinics in the state of Florida that provide comprehensive assessments, diagnostic services, and treatment to individuals who show signs of Alzheimer's disease and related memory disorders. The Memory Disorder Clinics are also required to conduct specific research in coordination with the department. The clinics are established at medical schools, teaching hospitals, and public and private, not-for-profit hospitals.[17] From July 1, 2015 through June 30, 2016, the Memory Disorder Clinics completed

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[10] Dep't of Elder Affairs, *Alzheimer's Disease Initiative*, http://elderaffairs.state.fl.us/doea/alz.php , (last visited Mar. 9, 2017).
[11] *Id.*
[12] Specific Appropriations 410 of chapter 2016-66, Laws of Fla. (General Appropriations Act for the 2016-2017 fiscal year).
[13] Dep't of Elder Affairs, *2016 Summary of Programs and Services - Section D,* p. 94, http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2016/2016_SOPS_D.pdf (last visited Mar. 9, 2017).
[14] Dep't of Elder Affairs, *Department of Elder Affairs Programs and Services Handbook, Appendix B - Co-Payment for Service Guidelines (ADI and CCE Programs), Attachment 2: 2016 Co-Pay Schedule for Individual,* http://elderaffairs.state.fl.us/doea/notices/July16/2016_Appendix_B_Co-Payment_for_Service_Guidelines.pdf, (last visited Mar. 9, 2017).
[15] *Id.* at B-34.
[16] *Id.*
[17] *Id.* The 15 Memory Disorder Clinics are: West Florida Hospital, Tallahassee Memorial Hospital, Mayo Clinic Jacksonville, University of Florida, Orlando Health Center for Aging, East Central Florida, Madonna Ptak Center for Memory Disorders at Morton Plant Mease, University of South Florida, St. Mary's Medical Center, Florida Atlantic University Louis and Anne

9,810 medical memory evaluations, saw 4,745 new patients, with 16,569 office visits made by patients and their caregivers.[18] Over 7,000 family caregivers also received educational training from the clinics on how to care for a loved one with dementia during this same time period.[19] For the 2016-2017 state fiscal year, the clinics used $3,464,683 in state funding to serve almost 7,000 unduplicated clients.[20]

The law currently provides that memory disorder clinics funded as of June 30, 1995, shall not receive decreased funding due solely to subsequent additions of memory disorder clinics. As of June 30, 1995, the following clinics were included in the statute:
A memory disorder at each of the three medical schools in the state;
A memory disorder clinic at a major non-profit research-oriented teaching hospital, and may fund a memory disorder clinic at any of the other affiliated teaching hospitals;

- A memory disorder clinic at the Mayo clinic in Jacksonville;
- A memory disorder clinic at the West Florida Regional Medical Center;
- The Central Florida Memory Disorder Clinic at the Joint Center for Advanced Therapeutics and Biomedical Research at the Florida Institute of Technology and Holmes Regional Medical Center, Inc.; and
- A memory disorder clinic located at a public hospital that is operated by an independent special hospital taxing district that governs multiple hospitals and is located in a county with a population greater than 800,000.[21]

Florida Hospital in Central Florida opened a self-funded memory disorder program in 2012. The Florida Hospital Maturing Minds Clinic serves patients with Alzheimer's disease and related disorders in Orange, Seminole, and Osceola counties. It is estimated that 30,000 people with Alzheimer's disease live in these three counties.[22] The clinic conducts over 360 new patient memory loss evaluations each year and provides services and referrals to other local organizations.[23] The clinic does not plan to request state funding at this time, but will seek national and local grants and the state designation will assist the clinic in that process, according to local representatives.[24]

Model Day Care

Model day care programs provide a safe environment where Alzheimer's patients can meet and socialize during the day as well as receive therapeutic interventions that improve their cognitive

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Green Memory and Wellness Center, Sarasota Memorial Hospital, Lee Memorial Health System, Broward Health North, The Wien Center for Alzheimer's Disease and Memory Disorders Mt. Sinai Medical Center, and University of Miami Memory Disorders Center, Center on Aging Mental Health Hospital Center.

[18] Dep't of Elder Affairs, *2015-2016 Year End Summary - Alzheimer Disease Initiative,* p. 3, http://elderaffairs.state.fl.us/doea/alz/MDC_Year_End_Summary_2015-2016.pdf (last visited: Mar. 9, 2017).

[19] *Id.*

[20] Dep't of Elder Affairs, *2016 Summary of Programs and Services - Section D, Memory Disorder Clinics Appropriation History and Numbers Served,* p. 97, http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2016/2016_SOPS_D.pdf (last visited: Mar. 9, 2017).

[21] Chapter Law 1995-253, s. 1, Laws of Fla.

[22] Fla. Hospital, *Memory Disorder Clinics Handout - Support HB 883/SB 1050* (on file with the Senate Committee on Health Policy).

[23] Fla. Hospital, *Memory Disorder Clinics Handout - Support HB 883/SB 1050* (on file with the Senate Committee on Health Policy).

[24] Conversation with Jean Van Smith, Florida Hospital Representative (March 9, 2017).

functioning. Model day care programs have been established in Gainesville, Tampa, and Miami.[25]

Florida Brain Bank

The Florida Brain Bank was created in 1987, is administered by Mount Sinai Medical Center, and facilitated by an additional four regional centers. The Florida Brain Bank conducts research related to Alzheimer's disease and other degenerative disorders of the brain. Participants elect to "bank" their brain making the patient's brain tissue available to researchers upon the patient's death.[26] Upon the patient's death, a final pathology report would also be made available to the patient's family and physicians. Currently, the only way to get an accurate diagnosis of Alzheimer's disease or related dementia disorders is a brain autopsy at the time of death.[27] The Brain Bank's 2016-2017 State General Revenue appropriation was $117,535 and the bank registered 87 individuals and conducted 79 autopsies during that fiscal year.[28]

The Alzheimer's Disease Advisory Committee is statutorily created under s. 430.501(2), F.S., and includes 10 members appointed by the Governor. The members advise the department on legislative, programmatic, and administrative matters that relate to individuals with Alzheimer's disease and their caregivers. Members serve 4-year, staggered terms and select one of its own members to serve as chair of the committee for a 1 year term.[29]

III. Effect of Proposed Changes:

Section 1 republishes and amends s. 430.502, F.S., relating to the establishment of the Alzheimer Disease Initiative program's memory disorder clinics and adds a memory disorder clinic at Florida Hospital in Orange County. The memory disorder clinics conduct research and training in a diagnostic and therapeutic setting for persons suffering from Alzheimer's disease and related memory disorders.

Current statute provides that any memory disorder clinic funded as of June 30, 1995, shall not receive decreased funding due solely to the subsequent additions of memory disorder clinics. The addition of Florida Hospital in Orange County makes 16 total memory disorder clinics created under the statute, of which at least seven have been added since June 30, 2015.

Section 2 reenacts s. 1004.445, F.S., relating to the Johnnie S. Byrd, Sr., Alzheimer Center and Research Institute, for the purpose of incorporating the amendment made to the underlying act, s. 430.502, F.S.

Section 3 provides an effective date of July 1, 2017.

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[25] Dep't of Elder Affairs, *Alzheimer's Disease Initiative*, http://elderaffairs.state.fl.us/doea/alz.php (last visited Mar. 9, 2017).
[26] Dep't of Elder Affairs, *The Florida Brain Bank*, http://elderaffairs.state.fl.us/doea/BrainBank/howto.php (last visited Mar. 9, 2017).
[27] *Id*.
[28] Department of Elder Affairs, *2016 Summary of Programs and Services - Section D, Brain Bank Appropriation History and Client Served*, p. 98, http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2016/2016_SOPS_D.pdf (last visited Mar. 9, 2017)
[29] Dep't of Elder Affairs, *Alzheimer's Disease Advisory Committee,* http://elderaffairs.state.fl.us/doea/advisory_alz.php (last visited Mar. 9, 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 costs associated with the Memory Disorder Clinic at Florida Hospital in Orange County will be funded through Florida Hospital. The hospital anticipates competing for several local, state, and national grants, which may bring additional funds and resources to the state for Alzheimer's research. Receiving a statutory designation as a state Memory Disorder Clinic may help the hospital in its efforts to receive those grant and research dollars.

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 the following sections of the Florida Statutes: 430.502 and 1004.445.

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 Simmons

9-00495-17 20171050__

A bill to be entitled

An act relating to memory disorder clinics; amending s. 430.502, F.S.; establishing a memory disorder clinic at Florida Hospital in Orange County; reenacting s. 1004.445(3), F.S., relating to providing assistance to memory disorder clinics, to incorporate the amendment made to s. 430.502, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (1) of section 430.502, Florida Statutes, is amended, and subsection (2) is republished, to read:

430.502 Alzheimer's disease; memory disorder clinics and day care and respite care programs.—

(1) There is established:

(a) A memory disorder clinic at each of the three medical schools in this state;

(b) A memory disorder clinic at a major private nonprofit research-oriented teaching hospital, and may fund a memory disorder clinic at any of the other affiliated teaching hospitals;

(c) A memory disorder clinic at the Mayo Clinic in Jacksonville;

(d) A memory disorder clinic at the West Florida Regional Medical Center;

(e) A memory disorder clinic operated by Health First in Brevard County;

9-00495-17 20171050__

(f) A memory disorder clinic at the Orlando Regional Healthcare System, Inc.;

(g) A memory disorder center located in a public hospital that is operated by an independent special hospital taxing district that governs multiple hospitals and is located in a county with a population greater than 800,000 persons;

(h) A memory disorder clinic at St. Mary's Medical Center in Palm Beach County;

(i) A memory disorder clinic at Tallahassee Memorial Healthcare;

(j) A memory disorder clinic at Lee Memorial Hospital created by chapter 63-1552, Laws of Florida, as amended;

(k) A memory disorder clinic at Sarasota Memorial Hospital in Sarasota County;

(l) A memory disorder clinic at Morton Plant Hospital, Clearwater, in Pinellas County; ~~and~~

(m) A memory disorder clinic at Florida Atlantic University, Boca Raton, in Palm Beach County; and

(n) A memory disorder clinic at Florida Hospital in Orange County,

for the purpose of conducting research and training in a diagnostic and therapeutic setting for persons suffering from Alzheimer's disease and related memory disorders. However, memory disorder clinics funded as of June 30, 1995, shall not receive decreased funding due solely to subsequent additions of memory disorder clinics in this subsection.

(2) It is the intent of the Legislature that research conducted by a memory disorder clinic and supported by state

funds pursuant to subsection (1) be applied research, be service-related, and be selected in conjunction with the department. Such research may address, but is not limited to, diagnostic technique, therapeutic interventions, and supportive services for persons suffering from Alzheimer's disease and related memory disorders and their caregivers. A memory disorder clinic shall conduct such research in accordance with a research plan developed by the clinic which establishes research objectives that are in accordance with this legislative intent. A memory disorder clinic shall also complete and submit to the department a report of the findings, conclusions, and recommendations of completed research. This subsection does not apply to those memory disorder clinics at the three medical schools in the state or at the major private nonprofit research-oriented teaching hospital or other affiliated teaching hospital.

Section 2. For the purpose of incorporating the amendment made by this act to section 430.502, Florida Statutes, in a reference thereto, subsection (3) of section 1004.445, Florida Statutes, is reenacted to read:

1004.445 Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute.—

(3) BUDGET.—The institute's budget shall include the moneys appropriated in the General Appropriations Act, donated, or otherwise provided to the institute from private, local, state, and federal sources, as well as technical and professional income generated or derived from practice activities at the institute. Any appropriation to the institute shall be expended for the purposes specified in this section, including conducting

and supporting research and related clinical services, awarding institutional grants and investigator-initiated research grants to other persons within the state through a peer-reviewed competitive process, developing and operating integrated data projects, providing assistance to the memory disorder clinics established in s. 430.502, and providing for the operation of the institute.

Section 3. 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 18, 2017

I respectfully request that **Senate Bill 1050**, relating to Memory Disorder Clinics, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

4/25/17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1050

Meeting Date *Bill Number (if applicable)*

Topic SB 1050, Memory Disorder Clinics *Amendment Barcode (if applicable)*

Name Jean Van Smith

Job Title Director of Govt. Relations

Address 2520 N. Orange Ave Phone 407-303-2850

Street

Orlando FL 32804 Email jean.vansmith@flhosp.org

City *State* *Zip*

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

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

Representing Florida Hospital

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)

4/25/2017
Meeting Date

1050
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-7291

St Petersburg FL 33705
City *State* *Zip*

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

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.

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 1458
INTRODUCER:	Education Committee and Senator Simmons
SUBJECT:	Blind Services Direct-support Organization
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Benvenisty	Graf	ED	**Fav/CS**
2.	Sikes	Elwell	AHE	**Recommend: Favorable**
3.	Sikes	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1458 removes the scheduled repeal date for the Blind Services Foundation of Florida, Inc., which serves as a direct-support organization for the Division of Blind Services.

The bill has no impact on state revenues or expenditures.

The bill takes effect July 1, 2017.

II. Present Situation:

Citizen-Support Organizations and Direct-Support Organizations

Citizen-support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created non-profit organizations[1] authorized to carry out specific tasks in support of public entities or public causes. 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. [2]

[1] Chapter 617, F.S.

[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 (d) *available at* http://www.myflorida.com/audgen/pages/pdf_files/10_700.pdf.

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 the following information to the appropriate agency by August 1:[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 code of ethics; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.[5]

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.[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 and posting the required information to the agency 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]

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information submitted by each 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]

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.[11]

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.[12] The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the

[3] Section 3, ch. 2014-96, L.O.F
[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).
[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.

Auditor General. 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 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.[15] 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.[16]

The Division of Blind Services

The Division of Blind Services (DBS) is one of several divisions housed within the Department of Education (DOE).[17] The DBS must be designed for the purpose of ensuring the greatest possible efficiency and effectiveness of services to individuals who are blind.[18] It is the intent of the Legislature to establish a coordinated program of services which are available to such individuals throughout Florida.[19] The program must be designed to maximize employment opportunities for individuals who are blind and to increase their independence and self-sufficiency.[20]

Direct-Support Organization for the Division of Blind Services

In 2004, the Legislature authorized the DBS to organize and incorporate a direct-support organization for the benefit of blind persons by raising funds; requesting and receiving grants, gifts, and bequests of moneys; and making expenditures.[21]

The DBS has established the Blind Services Foundation of Florida, Inc. (Blind Services Foundation) as its direct-support organization. The Blind Services Foundation has eight board members who are self-appointed according to the established bylaws[22] and one ex-officio board member who also serves as the director of the DBS.[23]

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[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 20.15(3)(e), F.S.
[18] Section 413.011(3), F.S.
[19] *Id.* at (2), F.S.
[20] *Id.; See* Florida Division of Blind Services, *Frequently Asked Questions*, http://dbs.myflorida.com/Frequently%20Asked%20Questions/index.html (last visited March 20, 2017).
[21] Section 12, ch. 2004-331, L.O.F., *codified as* s. 413.0111, F.S.
[22] Email, Blind Services Foundation of Florida, Inc. (Oct. 12, 2016). The by-laws were adopted December 2004; subsequently revised and adopted March 6, 2013. *Id.*
[23] Section 413.0111(2)(b) and (c), F.S.; Blind Services Foundation of Florida, Inc. *Board of Directors*, http://www.blindservicesfoundation.org/board-of-directors.html (last visited March 20, 2017).

The purposes and objectives of the Blind Services Foundation must be consistent with the priority issues and objectives of the DOE and must be in the best interests of the state.[24] Funds designated for the DSO must be used for the enhancement of programs and projects of the DBS.[25]

The DSO is scheduled to repeal on October 1, 2017. If repealed, the Blind Services Foundation will no longer exist statutorily, and the DBS will no longer have the statutory authority to organize and incorporate a direct-support organization.[26] Upon dissolution of the Blind Services Foundation, all Blind Services Foundation properties revert to the DBS.[27]

According to the DBS, repeal of the Blind Services Foundation may impact certain initiatives including, but not limited to, the following:

- Providing additional funding for children's services, education projects, public education and awareness, and the establishment of an endowment for blind students at Miami-Dade College.[28]
- Creating a series of informational and demonstrative sessions that highlight the capabilities of people who are blind.[29] This initiative gives personal accounts and demonstrates employment, personal, and socially geared technology that allows blind people to be included and functional in Florida.[30] This initiative has been presented to public schools, the Department of Education employees, a variety of colleges, and at other appropriate venues throughout the state.[31]

Additionally, twenty percent of the proceeds from the sale of the "Bikers Care" specialty motorcycle tag is distributed to the Blind Services Foundation.[32]

Legislative Review: Findings and Recommendations for the Division of Blind Services

Senate professional staff reviewed documents related to the Blind Services Foundation for compliance with the authorizing and accountability statutes. Findings and recommendations are summarized below.

Blind Services Foundation's Compliance under Authorizing Statute

The Blind Services Foundation:[33]

[24] Section 412.0111(3), F.S.
[25] Section 413.0111(4), F.S.
[26] Section 413.0111(2)(a), F.S.
[27] *Id.* at (2)(e).
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] Email, Florida Department of Education (Feb. 3, 2017).
[33] Section 413.0111, F.S.

- 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.[34]
- Is subject to the public meetings and public records requirements established in statue.[35]
- Is required to maintain donations and direct service expenditures in a bank account outside of the State Treasury.[36]
- Is required to pay any administrative costs with private funds, and use designated funds for enhancing programs and projects for the DBS.
- Must have purposes and objectives consistent with the priorities and objectives of the DBS.[37]
- Must comply with law, which requires each DSO and CSO with annual expenditures in excess of $100,000 to annually provide an independent financial audit.[38]

The Blind Services Foundation appears to comply with the authorizing statutory requirements.

The Blind Services Foundation's Compliance under Accountability Statute

- Each DSO is required by law to annually provide specified information to the appropriate agency by August 1 of each year.[39]
  - **Finding:** The Foundation provided the required information to the DBS by the statutory deadline.[40] However, the Blind Services Foundation's code of ethics did not initially appear to fully comply with the standards and disclosures required by law.[41] Subsequently, the the Blind Services Foundation revised the code of ethics and appears to comply with the statutory requirements.
- By August 15 of each year agencies must submit an annual report containing information from the DSO or CSO, with a recommendation for continuing, terminating, or modifying the agency's association with the DSO or CSO, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA.[42]
  - **Finding:** The DOE provided hard copies of the reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA by the statutory deadline.[43]
- Each agency must make the information received from each DSO or CSO available to the public through the agency's website.[44] 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.[45]

[34] Sections 413.0111(1) and (2)(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.
[35] Section 413.0111(2)(d), F.S. See also s. 24, Art. I of the State Constitution, chapter 119, F.S., and s. 286.011, F.S.
[36] Section 413.0111(2)(f), F.S.
[37] *Id.* at (3).
[38] Section 215.981(1), F.S.
[39] Section 20.058(1), F.S. *See* pg. 2 of this analysis for the specific information required (e.g., name, statutory authority, brief description of the mission and fiscal plans, code of ethics, etc.).
[40] Email, Florida Department of Education (Nov. 15, 2016).
[41] *See*, ss. 112.3251, 112.313 and 112.3143(2), F.S.
[42] Section 20.058(3), F.S.
[43] Email, Florida Department of Education (Jan. 11, 2017).
[44] Section 20.058(2), F.S.
[45] *Id.*

- **Finding:** The required annual report has been posted to Florida's Fiscal Portal.[46] A link to the Florida Fiscal Portal is on the DOE's website.[47] The DBS's website contains a link to the Blind Services 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.[48] If the DSO or CSO fails to submit the required information for two consecutive years, the agency head must terminate the contract.[49]
  - **Finding:** There is not a current contract between the DBS and the Blind Services Foundation.[50]
  - **Recommendation:** The DBS and the Blind Services Foundation should consider entering a formal contract.

III. Effect of Proposed Changes:

This bill removes the scheduled repeal date for the Blind Services Foundation of Florida, Inc., which serves as the direct-support organization for the Division of Blind Services.

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.

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[46] 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.

[47] Email, Florida Department of Education (Jan. 13, 2017).

[48] Section 20.058(4), F.S.

[49] *Id.*

[50] Email, Florida Department of Education (Jan. 13, 2017). The Foundation operates similarly to the Department of Education's direct-support organization and the Florida College System direct-support organization, which also do not have contracts. *Id.* Additionally, the Foundation's board elects to have their funds disbursed directly to the Division. *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Blind Services Foundation of Florida, Inc. (Blind Services Foundation) allocates approximately $50,000 each year to support a specific project that the Foundation's Board agrees is appropriate.[51] Over the last five years, the Foundation has supported initiatives that provide additional funding for children's services, education projects, public education and awareness, and the establishment of an endowment for blind students at Miami-Dade College.[52] Without the Blind Services Foundation, these initiatives may need to seek other sources of funding.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 413.0111 of the Florida Statutes.

IX. Additional Information:

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

CS by Education on March 21, 2017:
The committee substitute removes from the bill provisions related to the Florida Endowment Foundation for Vocational Rehabilitation, which is the direct-support organization of the Division of Vocational Rehabilitation.

B. Amendments:

None.

[51] Email, Florida Department of Education (Feb. 11, 2017).
[52] *Id.*

By the Committee on Education; and Senator Simmons

581-02689-17 20171458c1

A bill to be entitled

An act relating to the blind services direct-support organization; amending s. 413.0111, F.S.; abrogating the scheduled repeal of provisions relating to the blind services direct-support organization; providing an effective date.

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

Section 1. Subsection (7) of section 413.0111, Florida Statutes, is amended to read:

413.0111 Blind services direct-support organization.—

~~(7) This section is repealed October 1, 2017, unless reviewed and saved from repeal by the Legislature.~~

Section 2. This act shall take effect July 1, 2017.

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 14, 2017

I respectfully request that **Senate Bill 1458**, relating to Blind Services Direct-support Organization, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 1552 (558178)
INTRODUCER:	Appropriations Subcommittee on Pre-K-12 Education; Education Committee; and Senator Simmons
SUBJECT:	Florida Best and Brightest Teacher and Principal Scholar Award Program
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Pre-meeting**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1552 establishes the Florida Best and Brightest Teacher and Principal Scholar Award Program (Award Program) to recognize the contributions of teachers and principals to student success and performance outcomes and provides criteria for the Award Program.

The bill also revises school improvement and accountability measures that apply to public schools, including charter schools, in order improve struggling and low-performing schools. Specifically, the bill:

- Requires school districts to develop a school improvement plan for each school in the district with a school grade of "D" or "F."
- Expands the grade levels, indicators, and interventions addressed in a school district's early warning system to support student academic performance and engagement.
- Specifies educational emergency conditions under which a school district may negotiate provisions of its contract with appropriate bargaining units, which must result in a memorandum of understanding regarding personnel decisions.
- Clarifies conditions and establishes definitions that apply to schools subject to differentiated accountability.
- Accelerates, by at least one school year, the timing and implementation of turnaround options specified in law.

- Revises the options and requirements applied to turnaround traditional public schools and turnaround charter schools.

Funding for the Florida Best and Brightest Teacher and Principal Scholar Award Program is contingent upon an appropriation in the General Appropriations Act. SB 2500, the Senate General Appropriations Act, does not provide an appropriation for the program.

The bill takes effect on July 1, 2017.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed in the Effect of Proposed Changes section of the bill analysis.

III. Effect of Proposed Changes:

Florida Best and Brightest Teacher and Principal Scholar Award Program (Section 6)

Present Situation

The Florida Best and Brightest Teacher Scholarship Program provides categorical funding for scholarships to be awarded to classroom teachers[1] who have demonstrated a high level of academic achievement.[2]

To be eligible for a scholarship, a classroom teacher must have:[3]

- Achieved a composite score at or above the 80th percentile on either the SAT or the ACT based on the National Percentile Ranks[4] in effect when the classroom teacher took the assessment.
- An evaluation of highly effective[5] in the school year immediately preceding the year in which the scholarship will be awarded, unless the classroom teacher is newly hired by the district school board and has not been evaluated.

[1] A classroom teacher is defined as a staff member assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers. Includes classroom teachers in school districts, the Florida School for the Deaf and the Blind, and charter schools. Section 1012.731(7), F.S.
[2] Section 1012.731(2), F.S. *See also* s. 25, ch. 2016-62, L.O.F.
[3] Section 1012.731(3)(a), F.S.
[4] Percentile ranks represent the percentage of students who score equal to or below the score the student obtained.
[5] Instructional personnel are assigned among four levels of performance, as "highly effective," "effective," "needs improvement" (or "developing" for instructional personnel in the first three years of employment), or "unsatisfactory." Section 1012.34(2)(e), F.S. All instructional personnel and school administrators employed by Florida's public school districts must undergo an annual performance evaluation based on sound educational principles and contemporary research in effective educational practices. Evaluations occur annually, except that newly hired classroom teachers are evaluated twice in their first year of teaching in a school district. Section 1012.34(3)(a), F.S. The evaluation criteria for instructional personnel include student performance, instructional practice, and professional and job responsibilities. Section 1012.34(3)(a)1., 2., and 4., F.S. School administrator evaluation criteria include instructional leadership. Section 1012.34(3)(a)3., F.S. Likewise, the evaluation criteria for school administrators include student performance and professional and job responsibilities.

The schedule for the scholarship award is:

- No later than November 1, an eligible classroom teacher must submit to the school district an official record of his or her SAT or ACT score demonstrating a score at or above the 80th percentile based on the National Percentile Ranks in effect when the teacher took the assessment.[6]
- Annually, by December 1, each school district must submit to the Department of Education (DOE) the number of eligible classroom teachers who qualify for the scholarship.
- Annually, by February 1, the DOE must disburse scholarship funds to each school district for each eligible classroom teacher to receive a scholarship as provided in the General Appropriations Act. A scholarship in the amount provided in the General Appropriations Act must be awarded to every eligible classroom teacher. If the number of eligible classroom teachers exceeds the total appropriation authorized in the General Appropriations Act, the department must prorate the per-teacher scholarship amount.[7]
- Annually, by April 1, each school district must award the scholarship to each eligible classroom teacher.

The current statute is scheduled to expire on July 1, 2017.[8]

For the 2016-2017 fiscal year, the Legislature appropriated $49 million for the Florida Best and Brightest Teacher Scholarship Program.[9] According to proviso in the 2016 General Appropriations Act, the scholarship award may be up to $10,000 to every eligible classroom teacher.[10]

Effect of Proposed Changes

Section 6 establishes the Florida Best and Brightest Teacher and Principal Scholar Award Program (Award Program) to recognize the contributions of teachers and principals to student success and performance outcomes. The bill provides eligibility criteria:

- For a full-time classroom teacher and a full-time school administrator to qualify for the Award Program scholarship; and
- For a newly hired full-time classroom teacher and full-time school administrator to qualify for a one-time hiring bonus.

Specifically, section 6 requires that to qualify for the Award Program a teacher or an administrator must:

- Be employed on an annual contract or probationary contract;

Section 1012.34(3)(a)1. and 4, F.S. Instructional leadership practices are also included in school administrator evaluations. Section 1012.34(3)(a)3., F.S.

[6] Once a classroom teacher is deemed eligible by the school district, the teacher remains eligible as long as he or she remains employed by the school district as a classroom teacher at the time of the award and receives an annual performance evaluation rating of highly effective. Section 1012.731(3)(b), F.S.

[7] Section 1012.731(5), F.S.

[8] Section 1012.731(8), F.S.

[9] Specific Appropriation 103, ch. 2016-66, L.O.F.

[10] *Id.* There were 7,188 total eligible teachers in 2016-2017. Florida Department of Education, *Florida's Best & Brightest Teacher Scholarship Program*, presentation to The Florida Senate Appropriations Subcommittee on Pre-K-12 (January 25, 2017). This would equate to a prorated award of $6,817 per eligible teacher.

- Participate in the school district's performance salary schedule;
- Meet one of the achievement requirements specified in the bill; and
- Meet one of the performance requirements specified in the bill, which include:
  - For existing teachers and administrators, a "highly effective" rating or commitment to working in a low-performing school for 3 years and a "highly effective" rating for 2 out of 3 years.
  - For newly hired teachers and administrators, graduation from or completion of a specified undergraduate program with a 3.0 grade point average, and commitment to working for three years in a Florida public school or critical teacher shortage area.

Eligibility Requirements and Awards for Existing Teachers and School Administrators

Section 6 provides that, to receive an Award Program scholarship, a full-time classroom teacher or full-time administrator must:

- Be employed on an annual contract or probationary contract[11] and participate in the school district's performance salary schedule.[12]
- Meet one of the following achievement requirements:
  - For a classroom teacher, a score at or above the 90th percentile on the Florida Teacher Certification Examination in a subject that he or she is teaching.
  - For a school administrator, a score at or above the 90th percentile on the Florida Educational Leadership Examination.
  - For a classroom teacher or school administrator, a composite score at or above the 80th percentile on either the SAT or the ACT based on the National Percentile Ranks in effect when the classroom teacher or school administrator took the assessment.
  - For a classroom teacher or school administrator, a composite score on the GRE, LSAT, GMAT, or MCAT at or above a score adopted by the State Board of Education (SBE).[13]
  - For a classroom teacher or school administrator, a cumulative undergraduate or graduate grade point average of at least 3.5 on a 4.0 scale, as verified on the teacher's or administrator's official final college transcript.
- Meet one of the following performance requirements:
  - Received a rating of highly effective in the school year immediately preceding the year in which the scholarship will be awarded.
  - If he or she works in a low-performing school[14] or a school that was designated by the department as low-performing within the previous 2 years and commits to working at the

[11] An annual contract is an employment contract for a period of no longer than one school year that a district school board may choose to award or not award without cause. Section 1012.335(1)(a), F.S. As of July 1, 2011, all new hires of instructional personnel are under annual contract basis, but does not include substitute teachers. *Id.* and (1) and (2). The first annual contract for a newly hired instructional personnel is a one-year probationary contract. *Id*.

[12] The performance salary schedule predicates adjustments to an instructional personnel's base salary upon his or her annual performance evaluation. Section 1012.34, F.S. Instructional personnel and school administrators hired on or after July 1, 2014, and instructional personnel on annual contracts as of July 1, 2014, must be placed on the performance salary schedule. Section 1012.22(1)(c)4. and 5., F.S. Under the performance salary schedule, annual salary adjustments may only be given to employees rated highly effective or effective on annual performance evaluations. Section 1012.22(1)(c)5.b., F.S.

[13] The GRE is the Graduate Record Examination; the LSAT is the Law School Admissions Test; the GMAT is the Graduate Management Admission Test; and the MCAT is the Medical College Admission Test.

[14] The Department of Education must annually identify each public school in need of intervention and support to improve student academic performance; school earning a grade of "D" or "F" under the school grading system are schools in need of intervention and support. Section 1008.33(3)(b), F.S.

school for at least 3 years, must have been received a rating of highly effective in the school year immediately preceding the first year in which the scholarship is awarded and maintain a highly effective evaluation rating in at least 2 of every 3 annual performance evaluations, based on a rolling 3-year period.

Eligibility Requirements and Awards for Newly Hired Teachers and School Administrators

Section 6 creates a separate eligibility category for newly hired classroom teachers and school administrators. A newly hired teacher and school administrator, who has not been evaluated, is not eligible for the Award Program scholarship but may receive a one-time hiring bonus of up to $10,000 if he or she:

- Is employed on an annual contract or probationary contract[15] and participates in the school district's performance salary schedule.[16]
- Meets one of the following achievement requirements:
  - For a classroom teacher, a score at or above the 90th percentile on the Florida Teacher Certification Examination in a subject that he or she is teaching.
  - For a school administrator, a score at or above the 90th percentile on the Florida Educational Leadership Examination.
  - For a classroom teacher or school administrator, a composite score at or above the 80th percentile on either the SAT or the ACT based on the National Percentile Ranks in effect when the classroom teacher or school administrator took the assessment.
  - For a classroom teacher or school administrator, a composite score on the GRE, LSAT, GMAT, or MCAT at or above a score adopted by the SBE.[17]
  - For a classroom teacher or school administrator, a cumulative undergraduate or graduate grade point average of at least 3.5 on a 4.0 scale, as verified on the teacher's or administrator's official final college transcript.
- Meets one of the following performance requirements:
  - Recipient of the Florida Prepaid Tuition Scholarship Program[18] who graduated with a minimum 3.0 grade point average and commit, pursuant to SBE rule, to working in a Florida public school for at least 3 years.
  - Completed the college reach-out program[19] and graduated with a minimum 3.0 grade point average, and commit, pursuant to SBE rule, to working in a Florida public school for at least 3 years.
  - Graduate from an approved Florida teacher preparation program[20] at a Florida college or university, with a minimum 3.0 grade point average, and commit, pursuant to SBE rule, to working in a critical teacher shortage area[21] at a Florida public school for at least 3 years.

[15] *Supra* note 14
[16] *Supra* note 15
[17] *Supra* note 16
[18] Section 1009.984, F.S.
[19] Section 1007.34, F.S.
[20] Section 1004.04, F.S.
[21] The term "critical teacher shortage area" means high-need content areas and high-priority location areas identified by the State Board of Education. Section 1012.07, F.S.

In subsequent school years, a newly hired classroom teacher or school administrator may earn a scholarship award if he or she meets the eligibility requirements for an existing teacher or administrator and maintains his or her initial commitment.

Prioritization of Awards

Section 6 requires that a scholarship in the amount provided in the General Appropriations Act (GAA) be awarded to every eligible classroom teacher and administrator. If the number of eligible classroom teachers and school administrators exceeds the total appropriation authorized in the GAA, the bill requires the department to prorate the per-scholar scholarship award amount, except that prior to the distribution of funds, the following priorities apply:

- Classroom teachers and school administrators who commit, pursuant to SBE rule, to working in a low-performing school and meet the specified eligibility criteria, must receive an award equal to a full scholarship award amount.
- Newly hired classroom teachers and school administrators who commit, pursuant to SBE rule, to working in a Florida public school and specified eligibility criteria must receive a one-time hiring bonus of up to $10,000.

Award Program Implementation

Similar to the current Florida Best and Brightest Teacher Scholarship Program, section 6 establishes the following schedule:

- By November 1, an eligible classroom teacher or school administrator must submit an official record of his or her achievement of the specified eligibility criteria. After a classroom teacher or school administrator is deemed eligible by the school district, including a teacher deemed eligible for the Florida Best and Brightest Teacher Scholarship Program in fiscal years 2015-2016 and 2016-2017, such classroom teacher or school administrator remains eligible as long as he or she maintains employment by the school district and meets other specified requirements.
- Annually, by December 1, each school district must submit to the Department of Education (DOE) the number of classroom teachers or school administrators who qualify for the scholarship.
- Annually, by February 1, the DOE must distribute scholarship funds to each school district.
- Annually, by April 1, each school district must distribute the scholarship awards to eligible classroom teachers and school administrators.

Section 6 requires the SBE to expeditiously adopt rules to implement the Award Program.

Section 6 may assist with recruiting and retaining qualified classroom teachers and school administrators in Florida.

School Improvement and Education Accountability

The SBE is responsible for holding all school districts and public schools accountable for student performance[22] through a state system of school improvement and education accountability that

[22] Sections 1008.33(1) and (2)(a), 1008.34, and 1008.345, F.S.

assesses student performance by school, identifies schools that are not meeting accountability standards, and institutes appropriate measures for enforcing improvement.[23]

The state system of school improvement and education accountability must:[24]
- Provide for uniform accountability standards;
- Provide assistance of escalating intensity to schools not meeting accountability standards;
- Direct support to schools in order to improve and sustain performance;
- Focus on the performance of student subgroups; and
- Enhance student performance.

Early Warning Systems (Section 1)

Present Situation

Currently, schools that serve any of grades 6, 7, or 8 must implement an early warning system (EWS) to identify students who need additional support to improve academic performance.[25] The EWS must include the following early warning indicators:[26]
- Attendance below 90 percent.
- One or more suspensions.
- Course failure in English Language Arts or mathematics.
- A Level 1 score on the statewide, standardized assessment in English Language Arts or mathematics.
- Additional indicators deemed appropriate by the school district.

The schools' child study team or a school-based team must convene to determine appropriate intervention strategies when a student exhibits two or more early warning indicators.[27] The school must provide 10 days' written notice of the meeting to the student's parent and the notice must include the meeting's purpose, time and location, and provide the parent the opportunity to participate.[28]

Schools offering grades 6, 7, or 8 must include data and information in its school improvement plan regarding the schools early warning system. The information must include:[29]
- A list of the early warning indicators used;
- The number of students who have two or more early warning indicators;
- The number of students in each grade that exhibits each early warning indicator; and
- A description of all intervention strategies used to improve academic performance of students identified by the early warning system.

[23] Section 1008.33(2)(a), F.S.
[24] Section 1008.33(2)(b), F.S.
[25] Section 1001.42(18)(a)2., F.S.
[26] Section 1001.42(18)(b)1., F.S.
[27] Section 1001.42(18)(b)2., F.S.
[28] Section 1001.42(18)(b), F.S.
[29] Section 1001.42(18)(a)2., F.S.

The school must also describe in its school improvement plan the strategies used by the school to implement the instructional practices for middle grades emphasized by the district's professional development system.[30]

Effect of Proposed Changes

Section 1 expands the schools that must implement an EWS to schools that serve any students in grades 1 through 8 and clarifies that the EWS indicators include:

- A course failure in English Language Arts or math during any grading period; and
- A substantial reading deficiency for a student in grades 1 through 3.

This section requires the school's child study team to consult with the student's parent to determine appropriate intervention strategies for the student when a student exhibits two or more EWS indicators. The data and information relating to the student's EWS indicators must be used by the team to inform any intervention strategies provided to the student.[31]

Beginning in the 2018-2019 academic year, each school's EWS to include data on:

- The number of students identified by the EWS as exhibiting two or more EWS indicators,
- The number of students by grade level who exhibit each EWS indicator, and
- A description of all intervention strategies employed by the school to improve the academic performance of students identified by the EWS.

Section 1 may result in the identification of additional students in need of support, which may help such students receive the appropriate intervention to improve the academic performance of such students.

Differentiated Accountability (Section 4)

Present Situation

Current law holds school districts accountable for improving the academic performance of all students and for identifying and improving schools that fail to meet accountability standards.[32] The academic performance of all students has a significant effect on the state school system and SBE is required to equitably enforce the accountability requirements of the state school system and may impose state requirements on school districts in order to improve the academic performance of all districts, schools, and students.[33]

[30] Section 1001.42(18)(a), F.S.
[31] Early warning system is already a component of the school improvement plan for schools with a grade of "D" or "F." *See* Florida Department of Education, *Form SIP-1, School Improvement Plan* (Dec. 2014), *available at* https://www.flrules.org/gateway/readRefFile.asp?refId=4622&filename=SIP-1_2014-15.pdf (incorporated by reference in rule 6A-1.099811, F.A.C.).
[32] Section 1008.33(2)(c), F.S.
[33] Section 1008.33(3)(a), F.S, Art. IX, Fla. Const.

The DOE must annually identify each public school in need of intervention and support to improve student academic performance.[34] All schools earning a grade of "D" or "F" are schools in need of intervention and support.[35]

The SBE must adopt a differentiated matrix of intervention and support strategies for assisting public schools identified as in need of intervention.[36] The intervention and support strategies must address student performance and may include improvement planning, leadership quality improvement, educator quality improvement, professional development, curriculum alignment and pacing, and the use of continuous improvement and monitoring plans and processes.[37] In addition, the SBE may prescribe reporting requirements to review and monitor the progress of the schools.[38] The rule must define the intervention and support strategies for school improvement for schools earning a grade of "D" or "F" and the roles for the district and department.[39] The rule shall differentiate among schools earning consecutive grades of "D" or "F," or a combination thereof, and provide for more intense monitoring, intervention, and support strategies for these schools.[40]

Effect of Proposed Changes

Section 4 requires school districts to develop a school improvement plan for each school in the district with a school grade of "D" or "F."

This section clarifies conditions and establishes definitions that apply to schools subject to differentiated accountability. The bill requires the SBE rule regarding a differentiated matrix of intervention and support strategies for assisting public schools to define and clearly differentiate among:

- A "school-in-need", which means a school with a grade of "D," or which is in danger of earning a grade of "F," and which is in need of intervention and support.
- A "turnaround school", which means a school with a grade of "F" or two consecutive grades below a "C," and which is in need of intensive intervention and support, and which is implementing a district-managed turnaround or a different turnaround option.
- A "persistently low-performing school", which means a turnaround school that has been subject to a differentiated matrix of intensive intervention and support strategies for more than 3 consecutive years or a turnaround school that was closed within 2 years after submitting a notice of intent. The bill specifies that the SBE rule must define low-performing school to include, at a minimum, any school meeting the requirements of differentiated accountability.

Accordingly, the specified differentiation may assist schools in receiving appropriate supports and implementing relevant strategies to improve student performance outcomes.

[34] Section 1008.33(3)(b), F.S.
[35] Sections 1008.33(3)(b) and 1008.34, F.S.
[36] Section 1008.33(3)(c), F.S.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*

Turnaround Options (Sections 3, 4 and 5)

Present Situation

The SBE must apply the most intense intervention and support strategies to schools earning an "F."[41] Within a year after receiving the first "F," the school district must implement a differentiated matrix of intervention and support strategies, select a turnaround option, and submit a plan for implementing the turnaround option to the DOE.[42] The plan must be approved by the SBE and once approved, the turnaround option must be implemented in the following school year.[43]

Turnaround options available to school districts in current law include:[44]

- Converting the school to a district-managed turnaround school;[45]
- Reassigning students to another school and monitor the progress of each reassigned student;
- Closing the school and reopening the school as one or more charter schools, each with a governing board that has a demonstrated record of effectiveness;
- Contracting with an outside entity that has a demonstrated record of effectiveness to operate the school; or
- Implementing a hybrid of the above turnaround options or other turnaround models that have a demonstrated record of effectiveness.

The Commissioner of Education is required to assign a community assessment team to each school district or governing board with a school that earned a grade of "F," or 2 consecutive grades of "D."[46] The team is directed to review certain school performance data and make recommendations to the school district, the governing board, or to the SBE, about how to address low performance causes in the school improvement plan.[47]

Effect of Proposed Changes

Section 4 modifies turnaround options available to school districts by adding new options and revising existing options, giving priority to the first three new options. Section 4 adds the following first three options:

- Implement an extended school day with at least 1 hour of additional learning time.
- Enter into a formal agreement with a nonprofit organization with tax exempt status under the Internal Revenue Code to implement an integrated student support service model that provides students and families with access to specified wrap-around services. Districts implementing this option may be eligible for additional funding as provided in the General Appropriations Act. The wrap-around services must include, but are not limited to:
  - Health services;
  - After-school programs;

[41] Section 1008.33(4)(a), F.S.
[42] *Id.*
[43] *Id.*
[44] Section 1008.33(4)(b), F.S
[45] A school that earns a grade of "D" for 3 consecutive years must implement the district-managed turnaround option. Section 1008.33(5), F.S.
[46] Section 1008.345(6)(d), F.S.
[47] *Id.*

  - Drug prevention programs;
  - College and career readiness; and
  - Food and clothing banks.
- Implement a principal autonomy program school under a performance based contract and in accordance with proposal elements, criteria, and timelines established by the SBE and specifically tailored for a turnaround school. A school district using this option for its turnaround school is eligible to participate in, and receive the benefits of, the principal autonomy program for only the turnaround school.

Section 4 also creates an option to contract as a conversion charter school and deletes the existing hybrid turnaround option. However, school districts are authorized to implement a combination of the specified turnaround options.

Section 5 modifies an existing requirement for the Commissioner of Education to assign a community assessment team to a low-performing school by specifying that such team must be assigned to each school district or governing board with a turnaround school. The team must include intervention and support strategies in the recommendations that the team makes to the school board or the governing board, as applicable, and to the SBE.

Accordingly, section 5 provides turnaround schools with additional options to implement turnaround strategies.

Section 3 conforms a cross reference in s. 1002.332, F.S., resulting from changes made to s. 1008.33, F.S.

Implementation Schedule (Section 4)

Present Situation

Currently, a school that earns a grade of "F," or 3 consecutive grades of "D," must have a planning year followed by 2 full school years to implement the initial turnaround. Implementation of the turnaround option is no longer required if the school improves by at least one letter grade during the planning year.[48]

A school earning a grade of "F" or 3 consecutive grades of "D" that improves its letter grade must continue to implement strategies identified in its school improvement plan pursuant to law. The department must annually review implementation of the school improvement plan for 3 years to monitor the school's continued improvement.[49]

If a school with an "F" or 3 consecutive grades of "D" does not improve by at least one letter grade after 2 full years of implementing the turnaround option, the school district must select a different option and submit another implementation plan to the department for state board approval. Implementation of the new plan must begin the school year following the implementation period of the existing turnaround option, unless the SBE determines that the

[48] Section 1008.33(4)(c), F.S. *But see* 6A-1.099811(9)(a), F.A.C. (providing that a school district may discontinue implementing a turnaround plan only if it earns a school grade of "C" or higher).
[49] Section 1001.42(18)(a) and 1008.33(4)(d), F.S.

school is likely to improve a letter grade if additional time is provided to implement the existing turnaround option.[50]

Effect of Proposed Changes

Section 4 accelerates, by at least one school year, the timing and implementation of specific turnaround options. Specifically, section 4 requires a turnaround school to immediately, during its first full year after receiving the designation:

- Implement required intensive intervention and support strategies.
- Provide to DOE the negotiated memorandum of understanding with the bargaining agent in educational emergency circumstances, described below.
- Provide to DOE, by September 1, a district-managed turnaround plan that has been submitted to the SBE for approval and must be implemented for the remainder of the current school year and continue for one additional school year.

The modified timeframe for implementation of turnaround options may assist struggling schools implement appropriate intervention strategies timely.

Educational Emergency (Section 1)

Present Situation

Florida law authorizes district school boards to declare an emergency in cases in which one or more schools in the district are failing or are in danger of failing and negotiate special provisions of its contract with the appropriate bargaining units to free these failing schools from contract restrictions that limit the school's ability to implement programs and strategies needed to improve student performance.[51]

Effect of Proposed Changes

Section 1 specifies educational emergency conditions under which a district school board may negotiate provisions of its contract with appropriate bargaining units that must result in a memorandum of understanding regarding personnel decisions. The district school board is authorized to negotiate in cases in which one or more schools in the district have a grade of "D" or "F." Section 1 also permits a district school board, beginning in the 2018-2019 academic year, to negotiate in cases in which one or more schools in the district are currently subject to, or in danger of being subject to, a differentiated matrix of intervention and support strategies as a turnaround school consistent with Florida law.

This may strengthen the authority and flexibility of school districts facing certain circumstances.

[50] Section 1008.33(4)(e), F.S.
[51] Section 1001.42(21), F.S.

Charter School Requirements (Section 2)

Present Situation

Charter schools that earn a grade of "D" or "F" must develop a school improvement plan, which must be approved by the sponsor.[52] Corrective actions are required for charter schools earning three consecutive grades of "D," two consecutive grades of "D" followed by a grade of "F," or two nonconsecutive grades of "F" within a three-year period. Such a charter school may choose one of the following corrective actions: [53]

- Contract for educational services to be provided directly to students, instructional personnel, and school administrators;
- Contract with an outside entity with a track record of effectiveness to operate the school;
- Reorganize the school under a new director or principal who is authorized to hire new staff; or
- Voluntarily close the school.

The charter school must implement the corrective action in the school year following receipt of a third consecutive grade of "D," a grade of "F" following two consecutive grades of "D," or a second nonconsecutive grade of "F" within a 3-year period.[54] A corrective action is no longer required if the charter school improves by at least one letter grade. However, the school must continue to implement its school improvement plan.[55] If a charter school does not improve by at least one letter grade after two full school years of implementing a corrective action, the school must choose another action.[56]

Effect of Proposed Changes

Section 2 aligns charter school corrective action provisions with actions applied to traditional public schools. Specifically, this section:

- Defines a turnaround charter school as a charter school earning a grade of "F" or two consecutive grades below a "C."
- Requires each turnaround charter school to take corrective action.
- Requires a turnaround charter school to immediately implement it approved school improvement plan for the remainder of the current school year and continue implementing the plan for at least 1 full school year and select a corrective action specified in law, unless the sponsor waives the corrective action subject to condition as specified in law.[57]

[52] Section 1002.33(9)(n)1., F.S.
[53] Section 1002.33(9)(n)2.a., F.S.
[54] Section 1002.33(9)(n)2.b., F.S.
[55] Section 1002.33(9)(n)2.d., F.S.
[56] Section 1002.33(9)(n)2.c. and e., F.S. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action. The sponsor may waive corrective actions if it determines that the charter school is likely to improve its grade if additional time is given to implement the school improvement plan. The sponsor may also extend the implementation period for a corrective action based upon a similar standard. The sponsor may not waive or extend corrective actions if the charter school earns a second consecutive grade of "F" while in corrective action. *Id.* Unless an exception applies, such a charter school must be terminated by the sponsor. Section 1002.33(9)(n) 4, F.S.
[57] Section 1002.33(9)(n)2.c., F.S.

This may streamline the application of differentiated accountability to turnaround schools and turnaround charter schools.

The bill takes 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 bill modifies the current Florida Best and Brightest Teacher Scholarship Program by revising classroom teacher eligibility, adding school administrators and establishing eligibility criteria, and creating a one-time hiring bonus for newly hired teachers and administrators. This may increase the number of educators eligible for the award.

Funding for the Florida Best and Brightest Teacher and Principal Scholar Award Program is contingent upon an appropriation in the General Appropriations Act. SB 2500, the Senate General Appropriations Act, does not provide an appropriation for the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.42, 1002.33, 1002.332, 1008.33, and 1008.345.

This bill creates section 1012.732 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.)

Recommended CS/CS by Appropriations Subcommittee on Pre-K - 12 Education on April 18, 2017:
The committee substitute modifies school improvement and accountability measures that apply to public schools, including charter schools to:

- Require school districts to develop a school improvement plan for each school in the district with a school grade of "D" or "F."
- Expand the grade levels, indicators, and interventions addressed in a school district's early warning system to support student academic performance and engagement.
- Specify educational emergency conditions under which a school district may negotiate provisions of its contract with appropriate bargaining units, which must result in a memorandum of understanding regarding personnel decisions.
- Clarify conditions and establishing definitions that apply to schools subject to differentiated accountability.
- Accelerate by at least one school year, the timing and implementation of turnaround options specified in law.
- Revise the options and requirements that apply to turnaround traditional public schools and turnaround charter schools.

CS by Education on April 3, 2017:
The committee substitute modifies the eligibility requirements for the Florida Best and Brightest Teacher and Principal Scholar Award Program by adding a way by which a classroom teacher and school administrator may satisfy the achievement eligibility requirement for the program award or bonus, as applicable. Specifically, the committee substitute authorizes a classroom teacher and school administrator to satisfy the achievement eligibility requirement by achieving a cumulative undergraduate or graduate grade point average of at least 3.5 on a 4.0 scale, as verified on the teacher's or administrator's official final transcript.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment

Between lines 558 and 559
insert:
d. Be a college or university graduate, have graduated with a minimum 3.0 grade point average, have worked in a science-, technology-, engineering-, or mathematics- (STEM-) related field for at least 3 years, commit to meeting teacher certification requirements within 3 years, and commit, pursuant to State Board of Education rule, to teach in a STEM-related classroom at a

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Florida public school for at least 3 years.


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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 K-12 education; amending s. 1001.42, F.S.; revising provisions relating to school improvements plans; requiring only specified schools to submit a school improvement plan; deleting a requirement that certain information be included in the improvement plans of certain schools; revising the grade levels required to implement an early warning system; revising the required content of an early warning system; requiring a specified team to monitor specified data; revising what constitutes an educational emergency and establishing duties of district school boards relating to such emergency; amending s. 1002.33, F.S.; revising the criteria a charter school must meet to require corrective action; revising requirements for corrective action by charter schools; revising criteria for waiver of automatic charter termination; amending s. 1002.332, F.S.; conforming a cross-reference; amending s. 1008.33, F.S.; providing that intervention and support services apply consistently to any school meeting specified criteria; revising the required timeline for the implementation of a district-managed turnaround plan; providing turnaround options available to school districts meeting specified criteria; amending s. 1008.345, F.S.; revising the criteria a school must meet to have a community assessment team; revising the


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duties of a community assessment team; creating s. 1012.732, F.S.; creating the Florida Best and Brightest Teacher and Principal Scholar Award Program to be administered by the Department of Education; providing the intent and purpose of the program; providing eligibility requirements for classroom teachers and school administrators to participate in the program; providing timelines and requirements for program implementation; providing funding priorities; defining the term "school district"; requiring the State Board of Education to adopt rules; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (18) and subsection (21) of section 1001.42, Florida Statutes, are amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—Maintain a system of school improvement and education accountability as provided by statute and State Board of Education rule. This system of school improvement and education accountability shall be consistent with, and implemented through, the district's continuing system of planning and budgeting required by this section and ss. 1008.385, 1010.01, and 1011.01. This system of school improvement and education

accountability shall comply with the provisions of ss. 1008.33, 1008.34, 1008.345, and 1008.385 and include the following:

(a) *School improvement plans.*—

~~1.~~ The district school board shall annually approve and require implementation of a new, amended, or continuation school improvement plan for each school in the district which has a school grade of "D" or "F";~~. If a school~~ has a significant gap in achievement on statewide, standardized assessments administered pursuant to s. 1008.22 by one or more student subgroups, as defined in the federal Elementary and Secondary Education Act (ESEA), 20 U.S.C. s. 6311(b)(2)(C)(v)(II); has not significantly increased the percentage of students passing statewide, standardized assessments; has not significantly increased the percentage of students demonstrating Learning Gains, as defined in s. 1008.34 and as calculated under s. 1008.34(3)(b), who passed statewide, standardized assessments; or has significantly lower graduation rates for a subgroup when compared to the state's graduation rate. The~~, that school's~~ improvement plan of a school that meets the requirements of this paragraph shall include strategies for improving these results. The state board shall adopt rules establishing thresholds and for determining compliance with this paragraph ~~subparagraph~~.

~~2. A school that includes any of grades 6, 7, or 8 shall include annually in its school improvement plan information and data on the school's early warning system required under paragraph (b), including a list of the early warning indicators used in the system, the number of students identified by the system as exhibiting two or more early warning indicators, the number of students by grade level that exhibit each early~~

~~warning indicator, and a description of all intervention strategies employed by the school to improve the academic performance of students identified by the early warning system. In addition, a school that includes any of grades 6, 7, or 8 shall describe in its school improvement plan the strategies used by the school to implement the instructional practices for middle grades emphasized by the district's professional development system pursuant to s. 1012.98(4)(b)9.~~

(b) *Early warning system.*—

1. A school that serves any students in grade 1 through grade ~~includes any of grades 6, 7, or~~ 8 shall implement an early warning system to identify students in such grades ~~6, 7, and 8~~ who need additional support to improve academic performance and stay engaged in school. The early warning system must include the following early warning indicators:

a. Attendance below 90 percent, regardless of whether absence is excused or a result of out-of-school suspension.

b. One or more suspensions, whether in school or out of school.

c. Course failure in English Language Arts or mathematics during any grading period.

d. A Level 1 score on the statewide, standardized assessments in English Language Arts or mathematics or, for students in grade 1 through grade 3, a substantial deficiency in reading under s. 1008.25(5)(a).

A school district may identify additional early warning indicators for use in a school's early warning system. Beginning in the 2018-2019 academic year, the system must include data on

the number of students identified by the system as exhibiting two or more early warning indicators, the number of students by grade level who exhibit each early warning indicator, and a description of all intervention strategies employed by the school to improve the academic performance of students identified by the early warning system.

2. When a student exhibits two or more early warning indicators, the school's child study team under s. 1003.02 or a school-based team formed for the purpose of implementing the requirements of this paragraph, in consultation with the student's parent, shall convene to determine appropriate intervention strategies for the student. The team must use data and information relating to a student's early warning indicators to inform any intervention strategies provided to the student. The school shall provide at least 10 days' written notice of the meeting to the student's parent, indicating the meeting's purpose, time, and location, and provide the parent the opportunity to participate.

(21) EDUCATIONAL ~~AUTHORITY TO DECLARE AN~~ EMERGENCY.—Pursue negotiations of ~~May declare an emergency in cases in which one or more schools in the district are failing or are in danger of failing and negotiate~~ special provisions of its contract with the appropriate bargaining units to free ~~these~~ schools meeting specified conditions from contract restrictions that limit a ~~the~~ school's ability to implement programs and strategies needed to improve student performance. The negotiations must result in a memorandum of understanding that addresses the selection, placement, and expectations of instructional personnel and school administrators. For purposes of this subsection, an

educational emergency exists in a school district under the following conditions, and the school board must act accordingly:

(a) A school board may negotiate in cases in which one or more schools in the district have a school grade of "D" or in which a school is in danger of earning a grade of "F."

(b) Beginning in the 2018-2019 academic year, a school board may negotiate in cases in which one or more schools in the district are currently subject to, or are in danger of being subject to, a differentiated matrix of intervention and support strategies as a turnaround school or turnaround schools under s. 1008.33(3)(c).

Section 2. Paragraph (n) of subsection (9) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(n)1. The director and a representative of the governing board of a charter school that has earned a grade of "D" or is in danger of earning a grade of "F" pursuant to s. 1008.34 shall appear before the sponsor to present information concerning each contract component having noted deficiencies. The director and a representative of the governing board shall submit to the sponsor for approval a school improvement plan to raise student performance. Upon approval by the sponsor, the charter school shall begin implementation of the school improvement plan. The department shall offer technical assistance and training to the charter school and its governing board and establish guidelines for developing, submitting, and approving such plans.

2.a. If a charter school earns a grade of "F" or two ~~three~~ consecutive grades below a "C," ~~of "D," two consecutive grades~~

~~of "D" followed by a grade of "F," or two nonconsecutive grades of "F" within a 3-year period,~~ the turnaround charter school governing board must immediately implement its approved school improvement plan for the remainder of the school year and continue implementation for at least 1 school year, and shall choose one of the following corrective actions:

(I) Contract for educational services to be provided directly to students, instructional personnel, and school administrators, as prescribed in state board rule;

(II) Contract with an outside entity that has a demonstrated record of effectiveness to operate the school;

(III) Reorganize the school under a new director or principal who is authorized to hire new staff; or

(IV) Voluntarily close the charter school.

b. The turnaround charter school must implement the corrective action in the school year following receipt of a grade of "F" or a second ~~third~~ consecutive grade below a "C." ~~of "D," a grade of "F" following two consecutive grades of "D," or a second nonconsecutive grade of "F" within a 3-year period.~~

c. The sponsor may annually waive a corrective action if it determines that the turnaround charter school is likely to improve a letter grade if additional time is provided to implement the intervention and support strategies prescribed by the school improvement plan. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" is subject to subparagraph 3. ~~4.~~

d. A turnaround charter school is no longer required to implement a corrective action if it improves to a grade of "C" or higher ~~by at least one letter grade~~. However, the charter

school must continue to implement strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 4. ~~5.~~

e. A turnaround charter school implementing a corrective action that does not improve to a grade of "C" or higher ~~by at least one letter grade~~ after 2 full school years of implementing the corrective action must select a different corrective action. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action, unless the sponsor determines that the charter school is likely to improve to a grade of "C" or higher ~~a letter grade~~ if additional time is provided to implement the existing corrective action. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" while implementing a corrective action is subject to subparagraph 3. ~~4.~~

~~3. A charter school with a grade of "D" or "F" that improves by at least one letter grade must continue to implement the strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 5.~~

3.~~4.~~ A charter school's charter contract is automatically terminated if the school earns two consecutive grades of "F" after all school grade appeals are final unless:

a. The charter school is established to turn around the performance of a district public school pursuant to s. 1008.33(4)(b)6. ~~s. 1008.33(4)(b)3.~~ Such charter schools shall be

governed by s. 1008.33;

b. The charter school serves a student population the majority of which resides in a school zone served by a district public school subject to s. 1008.33(4) ~~that earned a grade of "F" in the year before the charter school opened~~ and the charter school earns at least a grade of "D" in its third year of operation. The exception provided under this sub-subparagraph does not apply to a charter school in its fourth year of operation and thereafter; or

c. The state board grants the charter school a waiver of termination. The charter school must request the waiver within 15 days after the department's official release of school grades. The state board may waive termination if the charter school demonstrates that the Learning Gains of its students on statewide assessments are comparable to or better than the Learning Gains of similarly situated students enrolled in nearby district public schools. The waiver is valid for 1 year and may only be granted once. Charter schools that have been in operation for more than 5 years are not eligible for a waiver under this sub-subparagraph.

The sponsor shall notify the charter school's governing board, the charter school principal, and the department in writing when a charter contract is terminated under this subparagraph. The letter of termination must meet the requirements of paragraph (8)(c). A charter terminated under this subparagraph must follow the procedures for dissolution and reversion of public funds pursuant to paragraphs (8)(e)-(g) and (9)(o).

4.~~5.~~ The director and a representative of the governing

board of a graded charter school that has implemented a school improvement plan under this paragraph shall appear before the sponsor at least once a year to present information regarding the progress of intervention and support strategies implemented by the school pursuant to the school improvement plan and corrective actions, if applicable. The sponsor shall communicate at the meeting, and in writing to the director, the services provided to the school to help the school address its deficiencies.

5.~~6.~~ Notwithstanding any provision of this paragraph except sub-subparagraphs 3.a.-c. ~~4.a.-c.~~, the sponsor may terminate the charter at any time pursuant to subsection (8).

Section 3. Paragraph (b) of subsection (1) of section 1002.332, Florida Statutes, is amended to read:

1002.332 High-performing charter school system.—

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

(b) "High-performing charter school system" means an entity that:

1. Operated at least three high-performing charter schools in the state during each of the previous 3 school years;

2. Operated a system of charter schools in which at least 50 percent of the charter schools were high-performing charter schools pursuant to s. 1002.331 and no charter school earned a school grade of "D" or "F" pursuant to s. 1008.34 in any of the previous 3 school years regardless of whether the entity currently operates the charter school, except that:

a. If the entity assumed operation of a public school pursuant to s. 1008.33(4)(b)6. ~~s. 1008.33(4)(b)3.~~ with a school grade of "F," that school's grade may not be considered in

determining high-performing charter school system status for a period of 3 years.

b. If the entity established a new charter school that served a student population the majority of which resided in a school zone served by a public school that earned a grade of "F" or three consecutive grades of "D" pursuant to s. 1008.34, that charter school's grade may not be considered in determining high-performing charter school system status if it attained and maintained a school grade that was higher than that of the public school serving that school zone within 3 years after establishment; and

3. Did not receive a financial audit that revealed one or more of the financial emergency conditions set forth in s. 218.503(1) for any charter school assumed or established by the entity in the most recent 3 fiscal years for which such audits are available.

Section 4. Subsections (3), (4), and (5) of section 1008.33, Florida Statutes, are amended to read:

1008.33 Authority to enforce public school improvement.—

(3)(a) The academic performance of all students has a significant effect on the state school system. Pursuant to Art. IX of the State Constitution, which prescribes the duty of the State Board of Education to supervise Florida's public school system, the state board shall equitably enforce the accountability requirements of the state school system and may impose state requirements on school districts in order to improve the academic performance of all districts, schools, and students based upon the provisions of the Florida K-20 Education Code, chapters 1000-1013; the federal ESEA and its implementing

regulations; and the ESEA flexibility waiver approved for Florida by the United States Secretary of Education.

(b) ~~Beginning with the 2011-2012 school year,~~ The Department of Education shall annually identify each public school in need of intervention and support to improve student academic performance. All schools earning a grade of "D" or in danger of earning a grade of "F" pursuant to s. 1008.34 are considered schools in need of intervention and support.

(c) To assist in implementing paragraph (4)(a) and (b), the state board shall adopt by rule a differentiated matrix of intervention and support strategies for assisting traditional public schools identified under this section and rules for implementing s. 1002.33(9)(n), relating to charter schools. The intervention and support strategies must address student performance and include extended learning by at least 1 extra hour, and may include improvement planning, leadership quality improvement, educator quality improvement, professional development, curriculum alignment and pacing, and the use of continuous improvement and monitoring plans and processes. In addition, the state board may prescribe reporting requirements to review and monitor the progress of the schools. The rule must define the intervention and support strategies for school improvement for schools earning a grade of "D" or "F" and the roles for the district and department. The rule shall define and differentiate among schools as follows: ~~earning consecutive grades of "D" or "F," or a combination thereof, and provide for more intense monitoring, intervention, and support strategies for these schools.~~

1. A "school-in-need" means a school that has a grade of

"D" or that is in danger of earning a grade of "F," and that is in need of intervention and support under paragraph (b);

2. A "turnaround school" means a school with a grade of "F" or two consecutive grades below a "C" which is in need of intensive intervention and support and which is implementing a district-managed turnaround plan or a different turnaround option approved pursuant to subsection (4). A "turnaround charter school" is a charter school subject to the requirements of s. 1002.33(9)(n); and

3. A "persistently low-performing school" means a turnaround school that has been subject to a differentiated matrix of intensive intervention and support strategies for more than 3 consecutive years, or a turnaround school that was closed pursuant to s. 1008.33(4) within 2 years after the submission of a notice of intent.

The rule must also define a "low-performing school" to include, at minimum, any school meeting the requirements of this subsection.

(4)(a) The state board shall apply intensive ~~the most intense~~ intervention and support strategies to turnaround schools earning a grade of "F" or two consecutive grades below a "C." ~~"F."~~ In the first full school year after a school initially receives ~~earns~~ a turnaround school designation, ~~grade of "F,"~~ the school district must immediately implement intensive intervention and support strategies prescribed in rule under paragraph (3)(c) and, by September 1, provide~~, select a turnaround option from those provided in subparagraphs (b)1.-5., and submit a plan for implementing the turnaround option to~~ the

department with the memorandum of understanding negotiated pursuant to s. 1001.42(21) and with a district-managed turnaround plan for approval by the state board. Upon approval by the state board, the school district must implement the plan for the remainder of the school year and continue the plan for 1 full school year ~~for approval by the state board~~. ~~Upon approval by the state board, the turnaround option must be implemented in the following school year.~~

(b) The ~~turnaround~~ options available to the turnaround ~~a school district to address a~~ school include one or a combination of the following turnaround options, giving priority to the first three options ~~that earns a grade of "F" are~~:

1. Implement an extended school day with at least 1 hour of additional learning time. ~~Convert the school to a district-managed turnaround school;~~

2. Enter into a formal agreement with a nonprofit organization with tax exempt status under s. 501(c)(3) of the Internal Revenue Code to implement an integrated student support service model that provides students and families with access to wrap-around services, including, but not limited to, health services, after-school programs, drug-prevention programs, college and career readiness, and food and clothing banks. Districts implementing this option may be eligible for additional funding as provided in the General Appropriations Act.

3. Implement a principal autonomy program school, through a performance contract and in accordance with proposal elements, criteria, and timelines established by the state board pursuant to s. 1011.6202(2)(b) specifically tailored for a turnaround

school. For purposes of this section, a school district using this option for its turnaround school is eligible to participate in, and receive the benefits of, the principal autonomy program, pursuant to s. 1011.6202(1) for only the turnaround school.

5.~~2.~~ Reassign students to another school and monitor the progress of each reassigned student.~~;~~

6.~~3.~~ Close the school and reopen the school as one or more charter schools, each with a governing board that has a demonstrated record of effectiveness.~~;~~

4. Contract as a conversion charter school or with an outside entity that has a demonstrated record of effectiveness to operate the school.~~; or~~

~~5. Implement a hybrid of turnaround options set forth in subparagraphs 1.-4. or other turnaround models that have a demonstrated record of effectiveness.~~

(c) ~~A school earning a grade of "F" shall have a planning year followed by 2 full school years to implement the initial turnaround option selected by the school district and approved by the state board.~~ Implementation of the turnaround option is no longer required if the school improves to a grade of "C" or higher ~~by at least one letter grade~~.

~~(d) A school earning a grade of "F" that improves its letter grade must continue to implement strategies identified in its school improvement plan pursuant to s. 1001.42(18)(a). The department must annually review implementation of the school improvement plan for 3 years to monitor the school's continued improvement.~~

(d)~~(c)~~ If a turnaround school ~~earning a grade of "F"~~ does not improve to a grade of "C" or higher ~~by at least one letter~~

~~grade~~ after 2 full school years of implementing the turnaround option selected by the school district under paragraph (b), the school district must implement ~~select a different option and submit~~ another turnaround option ~~implementation plan to the department for approval by the state board~~. Implementation of the turnaround option ~~approved plan~~ must begin the school year following the implementation period of the existing turnaround option, unless the state board determines that the school is likely to improve to a grade of "C" or higher ~~a letter grade~~ if additional time is provided to implement the existing turnaround option.

~~(5) A school that earns a grade of "D" for 3 consecutive years must implement the district-managed turnaround option pursuant to subparagraph (4)(b)1. The school district must submit an implementation plan to the department for approval by the state board.~~

Section 5. Paragraph (d) of subsection (6) of section 1008.345, Florida Statutes, is amended to read:

1008.345 Implementation of state system of school improvement and education accountability.—

(6)

(d) The commissioner shall assign a community assessment team to each school district or governing board with a turnaround school ~~that earned a grade of "F" or three consecutive grades of "D"~~ pursuant to s. 1008.34 to review the school performance data and determine causes for the low performance, including the role of school, area, and district administrative personnel. The community assessment team shall review a high school's graduation rate calculated without high

school equivalency diploma recipients for the past 3 years, disaggregated by student ethnicity. The team shall make recommendations to the school board or the governing board and to the State Board of Education based on the interventions and support strategies identified pursuant to subsection (5) to ~~which~~ address the causes of the school's low performance and to incorporate the strategies ~~and may be incorporated~~ into the school improvement plan. The assessment team shall include, but not be limited to, a department representative, parents, business representatives, educators, representatives of local governments, and community activists, and shall represent the demographics of the community from which they are appointed.

Section 6. Section 1012.732, Florida Statutes, is created to read:

1012.732 The Florida Best and Brightest Teacher and Principal Scholar Award Program.—

(1) INTENT.—The Legislature recognizes that, second only to parents, teachers and principals play the most critical roles within schools in preparing students to achieve a high level of academic performance. The Legislature further recognizes that research has linked student successes and performance outcomes to the academic achievements and performance accomplishments of the teachers and principals who most closely affect their classroom and school learning environments. Therefore, it is the intent of the Legislature to designate teachers and principals who have achieved high academic standards during their own education as Florida's best and brightest teacher and principal scholars.

(2) PURPOSE.—There is created the Florida Best and

Brightest Teacher and Principal Scholar Award Program, as a performance-based scholarship award program, to be administered by the Department of Education. The performance-based award shall provide categorical funding for scholarships to be awarded to full-time classroom teachers, as defined in s. 1012.01(2)(a), and full-time school administrators, as defined in s. 1012.01(3)(c), excluding substitute teachers or substitute school administrators, who have demonstrated a high level of academic achievement and performance.

(3) ELIGIBILITY.—To be eligible for a scholarship, a full-time classroom teacher or full-time school administrator must be employed on an annual contract or probationary contract pursuant to s. 1012.335, participate in the school district's performance salary schedule pursuant to s. 1012.22, and meet at least one of the achievement requirements under paragraph (a) and at least one of the performance requirements under paragraph (b).

(a) Achievement requirements.—

1. For a classroom teacher, a score at or above the 90th percentile on the Florida Teacher Certification Examination in a subject that he or she is teaching;

2. For a school administrator, a score at or above the 90th percentile on the Florida Educational Leadership Examination;

3. For a classroom teacher or school administrator, a composite score at or above the 80th percentile on either the SAT or the ACT based on the National Percentile Ranks in effect when the classroom teacher or school administrator took the assessment;

4. For a classroom teacher or school administrator, a composite score on the GRE, LSAT, GMAT, or MCAT at or above a

score adopted by the State Board of Education; or

5. For a classroom teacher or school administrator, a cumulative undergraduate or graduate grade point average of at least 3.5 on a 4.0 scale, as verified on the teacher's or administrator's official final college transcript.

(b) Performance requirements.—The classroom teacher or school administrator:

1. Must have been evaluated as highly effective pursuant to s. 1012.34 in the school year immediately preceding the year in which the scholarship will be awarded;

2. If he or she works in a low-performing school or a school that was designated by the department as low-performing within the previous 2 years and commits, pursuant to State Board of Education rule, to working at the school for at least 3 years, must have been evaluated as highly effective pursuant to s. 1012.34 in the school year immediately preceding the first year in which the scholarship will be awarded and maintain a highly effective evaluation rating in at least two of every three annual performance evaluations, based on a rolling 3-year period; or

3. Must be newly hired by the district school board, must not have been evaluated pursuant to s. 1012.34, and must have met at least one of the following conditions:

a. Be a recipient of the Florida Prepaid Tuition Scholarship Program pursuant to s. 1009.984 who graduates with a minimum 3.0 grade point average and commit, pursuant to State Board of Education rule, to working in a Florida public school for at least 3 years;

b. Have completed the college reach-out program pursuant to

s. 1007.34 and graduated with a minimum 3.0 grade point average, and commit, pursuant to State Board of Education rule, to working in a Florida public school for at least 3 years; or

c. Be a Florida college or university graduate of a Florida teacher preparation program approved pursuant to s. 1004.04, have graduated with a minimum 3.0 grade point average, and commit, pursuant to State Board of Education rule, to working in a critical teacher shortage area under s. 1012.07 at a Florida public school for at least 3 years.

(4) IMPLEMENTATION.—In order to implement and administer the program, the following timelines and requirements apply:

(a) To demonstrate eligibility for an award, an eligible classroom teacher or school administrator, as applicable, must submit to the school district, no later than November 1, an official record of his or her achievement of the eligibility requirements specified in paragraph (3)(a). Once a classroom teacher or school administrator is deemed eligible by the school district, including teachers deemed eligible for the Florida Best and Brightest Teacher Scholarship Program in the 2015-2016 or 2016-2017 fiscal years pursuant to s. 25 of chapter 2016-62, Laws of Florida, the classroom teacher or school administrator remains eligible as long as he or she remains employed by the school district as a full-time classroom teacher or full-time school administrator at the time of the award and continues to meet the conditions specified under this section.

(b) Annually, by December 1, each school district shall submit to the department the number of eligible classroom teachers and school administrators who qualify for the scholarship.

(c) Annually, by February 1, the department shall disburse scholarship funds to each school district for each eligible classroom teacher and school administrator to receive a scholarship as provided in the General Appropriations Act.

(d) Annually, by April 1, each school district shall award the scholarship to each eligible classroom teacher and school administrator.

(5) FUNDING.—A scholarship in the amount provided in the General Appropriations Act shall be awarded to every eligible classroom teacher and school administrator.

(a) If the number of eligible classroom teachers and school administrators exceeds the total appropriation authorized in the General Appropriations Act, the department shall prorate the per-scholar scholarship award amount, except that prior to the distribution of funds, the following priorities apply:

1. Classroom teachers and school administrators who commit, pursuant to State Board of Education rule, to work in a low-performing school and meet the performance requirements of subparagraph (3)(b)2., shall receive an award equal to a full scholarship award amount. Classroom teachers and school administrators who do not fulfill the commitment made pursuant to subparagraph (3)(b)2. may not receive this priority; and

2. Newly hired classroom teachers and school administrators who commit, pursuant to State Board of Education rule, to work in a Florida public school and meet the performance requirements under subparagraph (3)(b)3., shall receive a one-time hiring bonus of up to $10,000. Classroom teachers and school administrators who do not fulfill the commitment made pursuant to subparagraph (3)(b)3. may not receive this priority.

(b) Newly hired classroom teachers and newly hired school administrators who initially participate in the program pursuant to subparagraph (3)(b)3. may only receive the one-time hiring bonus under subparagraph (a)2. In subsequent school years, such classroom teachers and school administrators may earn a scholarship award pursuant to subparagraph (3)(b)1. or subparagraph (3)(b)2., if they also maintain their initial commitments.

(6) DEFINITION.—For purposes of this section, the term "school district" includes the Florida School for the Deaf and the Blind and charter school governing boards.

(7) RULES.—The State Board of Education shall expeditiously adopt rules to implement this section.

Section 7. 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 1552
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Pre-K-12 Education); Education Committee; and Senator Simmons
SUBJECT:	Florida Best and Brightest Teacher and Principal Scholar Award Program
DATE:	April 26, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Sikes	Hansen	AP	**Fav/CS**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1552 establishes the Florida Best and Brightest Teacher and Principal Scholar Award Program (Award Program) to recognize the contributions of teachers and principals to student success and performance outcomes and provides criteria for the Award Program.

The bill also revises school improvement and accountability measures that apply to public schools, including charter schools, in order improve struggling and low-performing schools. Specifically, the bill:

- Requires school districts to develop a school improvement plan for each school in the district with a school grade of "D" or "F."
- Expands the grade levels, indicators, and interventions addressed in a school district's early warning system to support student academic performance and engagement.
- Specifies educational emergency conditions under which a school district may negotiate provisions of its contract with appropriate bargaining units, which must result in a memorandum of understanding regarding personnel decisions.
- Clarifies conditions and establishes definitions that apply to schools subject to differentiated accountability.
- Accelerates, by at least one school year, the timing and implementation of turnaround options specified in law.

- Revises the options and requirements applied to turnaround traditional public schools and turnaround charter schools.

Funding for the Florida Best and Brightest Teacher and Principal Scholar Award Program is contingent upon an appropriation in the General Appropriations Act. SB 2500, the Senate General Appropriations Act, does not provide an appropriation for the program.

The bill takes effect on July 1, 2017.

II. Present Situation:

The present situation for the relevant portions of the bill is discussed in the Effect of Proposed Changes section of the bill analysis.

III. Effect of Proposed Changes:

Florida Best and Brightest Teacher and Principal Scholar Award Program (Section 6)

Present Situation

The Florida Best and Brightest Teacher Scholarship Program provides categorical funding for scholarships to be awarded to classroom teachers[1] who have demonstrated a high level of academic achievement.[2]

To be eligible for a scholarship, a classroom teacher must have:[3]

- Achieved a composite score at or above the 80th percentile on either the SAT or the ACT based on the National Percentile Ranks[4] in effect when the classroom teacher took the assessment.
- An evaluation of highly effective[5] in the school year immediately preceding the year in which the scholarship will be awarded, unless the classroom teacher is newly hired by the district school board and has not been evaluated.

[1] A classroom teacher is defined as a staff member assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers. Includes classroom teachers in school districts, the Florida School for the Deaf and the Blind, and charter schools. Section 1012.731(7), F.S.
[2] Section 1012.731(2), F.S. *See also* s. 25, ch. 2016-62, L.O.F.
[3] Section 1012.731(3)(a), F.S.
[4] Percentile ranks represent the percentage of students who score equal to or below the score the student obtained.
[5] Instructional personnel are assigned among four levels of performance, as "highly effective," "effective," "needs improvement" (or "developing" for instructional personnel in the first three years of employment), or "unsatisfactory." Section 1012.34(2)(e), F.S. All instructional personnel and school administrators employed by Florida's public school districts must undergo an annual performance evaluation based on sound educational principles and contemporary research in effective educational practices. Evaluations occur annually, except that newly hired classroom teachers are evaluated twice in their first year of teaching in a school district. Section 1012.34(3)(a), F.S. The evaluation criteria for instructional personnel include student performance, instructional practice, and professional and job responsibilities. Section 1012.34(3)(a)1., 2., and 4., F.S. School administrator evaluation criteria include instructional leadership. Section 1012.34(3)(a)3., F.S. Likewise, the evaluation criteria for school administrators include student performance and professional and job responsibilities.

The schedule for the scholarship award is:

- No later than November 1, an eligible classroom teacher must submit to the school district an official record of his or her SAT or ACT score demonstrating a score at or above the 80th percentile based on the National Percentile Ranks in effect when the teacher took the assessment.[6]
- Annually, by December 1, each school district must submit to the Department of Education (DOE) the number of eligible classroom teachers who qualify for the scholarship.
- Annually, by February 1, the DOE must disburse scholarship funds to each school district for each eligible classroom teacher to receive a scholarship as provided in the General Appropriations Act. A scholarship in the amount provided in the General Appropriations Act must be awarded to every eligible classroom teacher. If the number of eligible classroom teachers exceeds the total appropriation authorized in the General Appropriations Act, the department must prorate the per-teacher scholarship amount.[7]
- Annually, by April 1, each school district must award the scholarship to each eligible classroom teacher.

The current statute is scheduled to expire on July 1, 2017.[8]

For the 2016-2017 fiscal year, the Legislature appropriated $49 million for the Florida Best and Brightest Teacher Scholarship Program.[9] According to proviso in the 2016 General Appropriations Act, the scholarship award may be up to $10,000 to every eligible classroom teacher.[10]

Effect of Proposed Changes

Section 6 establishes the Florida Best and Brightest Teacher and Principal Scholar Award Program (Award Program) to recognize the contributions of teachers and principals to student success and performance outcomes. The bill provides eligibility criteria:

- For a full-time classroom teacher and a full-time school administrator to qualify for the Award Program scholarship; and
- For a newly hired full-time classroom teacher and full-time school administrator to qualify for a one-time hiring bonus.

Specifically, section 6 requires that to qualify for the Award Program a teacher or an administrator must:

- Be employed on an annual contract or probationary contract;

Section 1012.34(3)(a)1. and 4, F.S. Instructional leadership practices are also included in school administrator evaluations. Section 1012.34(3)(a)3., F.S.

[6] Once a classroom teacher is deemed eligible by the school district, the teacher remains eligible as long as he or she remains employed by the school district as a classroom teacher at the time of the award and receives an annual performance evaluation rating of highly effective. Section 1012.731(3)(b), F.S.

[7] Section 1012.731(5), F.S.

[8] Section 1012.731(8), F.S.

[9] Specific Appropriation 103, ch. 2016-66, L.O.F.

[10] *Id.* There were 7,188 total eligible teachers in 2016-2017. Florida Department of Education, *Florida's Best & Brightest Teacher Scholarship Program*, presentation to The Florida Senate Appropriations Subcommittee on Pre-K-12 (January 25, 2017). This would equate to a prorated award of $6,817 per eligible teacher.

- Participate in the school district's performance salary schedule;
- Meet one of the achievement requirements specified in the bill; and
- Meet one of the performance requirements specified in the bill, which include:
  - For existing teachers and administrators, a "highly effective" rating or commitment to working in a low-performing school for 3 years and a "highly effective" rating for 2 out of 3 years.
  - For newly hired teachers and administrators, graduation from or completion of a specified undergraduate program with a 3.0 grade point average, and commitment to working for three years in a Florida public school or critical teacher shortage area.

Eligibility Requirements and Awards for Existing Teachers and School Administrators

Section 6 provides that, to receive an Award Program scholarship, a full-time classroom teacher or full-time administrator must:

- Be employed on an annual contract or probationary contract[11] and participate in the school district's performance salary schedule.[12]
- Meet one of the following achievement requirements:
  - For a classroom teacher, a score at or above the 90th percentile on the Florida Teacher Certification Examination in a subject that he or she is teaching.
  - For a school administrator, a score at or above the 90th percentile on the Florida Educational Leadership Examination.
  - For a classroom teacher or school administrator, a composite score at or above the 80th percentile on either the SAT or the ACT based on the National Percentile Ranks in effect when the classroom teacher or school administrator took the assessment.
  - For a classroom teacher or school administrator, a composite score on the GRE, LSAT, GMAT, or MCAT at or above a score adopted by the State Board of Education (SBE).[13]
  - For a classroom teacher or school administrator, a cumulative undergraduate or graduate grade point average of at least 3.5 on a 4.0 scale, as verified on the teacher's or administrator's official final college transcript.
- Meet one of the following performance requirements:
  - Received a rating of highly effective in the school year immediately preceding the year in which the scholarship will be awarded.
  - If he or she works in a low-performing school[14] or a school that was designated by the department as low-performing within the previous 2 years and commits to working at the

[11] An annual contract is an employment contract for a period of no longer than one school year that a district school board may choose to award or not award without cause. Section 1012.335(1)(a), F.S. As of July 1, 2011, all new hires of instructional personnel are under annual contract basis, but does not include substitute teachers. *Id.* and (1) and (2). The first annual contract for a newly hired instructional personnel is a one-year probationary contract. *Id*.

[12] The performance salary schedule predicates adjustments to an instructional personnel's base salary upon his or her annual performance evaluation. Section 1012.34, F.S. Instructional personnel and school administrators hired on or after July 1, 2014, and instructional personnel on annual contracts as of July 1, 2014, must be placed on the performance salary schedule. Section 1012.22(1)(c)4. and 5., F.S. Under the performance salary schedule, annual salary adjustments may only be given to employees rated highly effective or effective on annual performance evaluations. Section 1012.22(1)(c)5.b., F.S.

[13] The GRE is the Graduate Record Examination; the LSAT is the Law School Admissions Test; the GMAT is the Graduate Management Admission Test; and the MCAT is the Medical College Admission Test.

[14] The Department of Education must annually identify each public school in need of intervention and support to improve student academic performance; school earning a grade of "D" or "F" under the school grading system are schools in need of intervention and support. Section 1008.33(3)(b), F.S.

school for at least 3 years, must have been received a rating of highly effective in the school year immediately preceding the first year in which the scholarship is awarded and maintain a highly effective evaluation rating in at least 2 of every 3 annual performance evaluations, based on a rolling 3-year period.

Eligibility Requirements and Awards for Newly Hired Teachers and School Administrators

Section 6 creates a separate eligibility category for newly hired classroom teachers and school administrators. A newly hired teacher and school administrator, who has not been evaluated, is not eligible for the Award Program scholarship but may receive a one-time hiring bonus of up to $10,000 if he or she:

- Is employed on an annual contract or probationary contract[15] and participates in the school district's performance salary schedule.[16]
- Meets one of the following achievement requirements:
  - For a classroom teacher, a score at or above the 90th percentile on the Florida Teacher Certification Examination in a subject that he or she is teaching.
  - For a school administrator, a score at or above the 90th percentile on the Florida Educational Leadership Examination.
  - For a classroom teacher or school administrator, a composite score at or above the 80th percentile on either the SAT or the ACT based on the National Percentile Ranks in effect when the classroom teacher or school administrator took the assessment.
  - For a classroom teacher or school administrator, a composite score on the GRE, LSAT, GMAT, or MCAT at or above a score adopted by the SBE.[17]
  - For a classroom teacher or school administrator, a cumulative undergraduate or graduate grade point average of at least 3.5 on a 4.0 scale, as verified on the teacher's or administrator's official final college transcript.
- Meets one of the following performance requirements:
  - Recipient of the Florida Prepaid Tuition Scholarship Program[18] who graduated with a minimum 3.0 grade point average and commit, pursuant to SBE rule, to working in a Florida public school for at least 3 years.
  - Completed the college reach-out program[19] and graduated with a minimum 3.0 grade point average, and commit, pursuant to SBE rule, to working in a Florida public school for at least 3 years.
  - Graduate from an approved Florida teacher preparation program[20] at a Florida college or university, with a minimum 3.0 grade point average, and commit, pursuant to SBE rule, to working in a critical teacher shortage area[21] at a Florida public school for at least 3 years.

[15] *Supra* note 14
[16] *Supra* note 15
[17] *Supra* note 16
[18] Section 1009.984, F.S.
[19] Section 1007.34, F.S.
[20] Section 1004.04, F.S.
[21] The term "critical teacher shortage area" means high-need content areas and high-priority location areas identified by the State Board of Education. Section 1012.07, F.S.

- Be a college graduate with at least a 3.0 grade point average with at least 3 years experience in a science-, technology-, engineering-, or mathematics- (STEM-) related field, commit to meeting teacher certification requirements within 3 years, and commit, pursuant to State Board of Education rule, to teach in a STEM-related classroom at a Florida public school for at least 3 years.

In subsequent school years, a newly hired classroom teacher or school administrator may earn a scholarship award if he or she meets the eligibility requirements for an existing teacher or administrator and maintains his or her initial commitment.

Prioritization of Awards

Section 6 requires that a scholarship in the amount provided in the General Appropriations Act (GAA) be awarded to every eligible classroom teacher and administrator. If the number of eligible classroom teachers and school administrators exceeds the total appropriation authorized in the GAA, the bill requires the department to prorate the per-scholar scholarship award amount, except that prior to the distribution of funds, the following priorities apply:

- Classroom teachers and school administrators who commit, pursuant to SBE rule, to working in a low-performing school and meet the specified eligibility criteria, must receive an award equal to a full scholarship award amount.
- Newly hired classroom teachers and school administrators who commit, pursuant to SBE rule, to working in a Florida public school and specified eligibility criteria must receive a one-time hiring bonus of up to $10,000.

Award Program Implementation

Similar to the current Florida Best and Brightest Teacher Scholarship Program, section 6 establishes the following schedule:

- By November 1, an eligible classroom teacher or school administrator must submit an official record of his or her achievement of the specified eligibility criteria. After a classroom teacher or school administrator is deemed eligible by the school district, including a teacher deemed eligible for the Florida Best and Brightest Teacher Scholarship Program in fiscal years 2015-2016 and 2016-2017, such classroom teacher or school administrator remains eligible as long as he or she maintains employment by the school district and meets other specified requirements.
- Annually, by December 1, each school district must submit to the Department of Education (DOE) the number of classroom teachers or school administrators who qualify for the scholarship.
- Annually, by February 1, the DOE must distribute scholarship funds to each school district.
- Annually, by April 1, each school district must distribute the scholarship awards to eligible classroom teachers and school administrators.

Section 6 requires the SBE to expeditiously adopt rules to implement the Award Program.

Section 6 may assist with recruiting and retaining qualified classroom teachers and school administrators in Florida.

School Improvement and Education Accountability

The SBE is responsible for holding all school districts and public schools accountable for student performance[22] through a state system of school improvement and education accountability that assesses student performance by school, identifies schools that are not meeting accountability standards, and institutes appropriate measures for enforcing improvement.[23]

The state system of school improvement and education accountability must:[24]
- Provide for uniform accountability standards;
- Provide assistance of escalating intensity to schools not meeting accountability standards;
- Direct support to schools in order to improve and sustain performance;
- Focus on the performance of student subgroups; and
- Enhance student performance.

Early Warning Systems (Section 1)

Present Situation

Currently, schools that serve any of grades 6, 7, or 8 must implement an early warning system (EWS) to identify students who need additional support to improve academic performance.[25] The EWS must include the following early warning indicators:[26]
- Attendance below 90 percent.
- One or more suspensions.
- Course failure in English Language Arts or mathematics.
- A Level 1 score on the statewide, standardized assessment in English Language Arts or mathematics.
- Additional indicators deemed appropriate by the school district.

The schools' child study team or a school-based team must convene to determine appropriate intervention strategies when a student exhibits two or more early warning indicators.[27] The school must provide 10 days' written notice of the meeting to the student's parent and the notice must include the meeting's purpose, time and location, and provide the parent the opportunity to participate.[28]

Schools offering grades 6, 7, or 8 must include data and information in its school improvement plan regarding the schools early warning system. The information must include:[29]
- A list of the early warning indicators used;
- The number of students who have two or more early warning indicators;
- The number of students in each grade that exhibits each early warning indicator; and

[22] Sections 1008.33(1) and (2)(a), 1008.34, and 1008.345, F.S.
[23] Section 1008.33(2)(a), F.S.
[24] Section 1008.33(2)(b), F.S.
[25] Section 1001.42(18)(a)2., F.S.
[26] Section 1001.42(18)(b)1., F.S.
[27] Section 1001.42(18)(b)2., F.S.
[28] Section 1001.42(18)(b), F.S.
[29] Section 1001.42(18)(a)2., F.S.

- A description of all intervention strategies used to improve academic performance of students identified by the early warning system.

The school must also describe in its school improvement plan the strategies used by the school to implement the instructional practices for middle grades emphasized by the district's professional development system.[30]

Effect of Proposed Changes

Section 1 expands the schools that must implement an EWS to schools that serve any students in grades 1 through 8 and clarifies that the EWS indicators include:
- A course failure in English Language Arts or math during any grading period; and
- A substantial reading deficiency for a student in grades 1 through 3.

This section requires the school's child study team to consult with the student's parent to determine appropriate intervention strategies for the student when a student exhibits two or more EWS indicators. The data and information relating to the student's EWS indicators must be used by the team to inform any intervention strategies provided to the student.[31]

Beginning in the 2018-2019 academic year, each school's EWS to include data on:
- The number of students identified by the EWS as exhibiting two or more EWS indicators,
- The number of students by grade level who exhibit each EWS indicator, and
- A description of all intervention strategies employed by the school to improve the academic performance of students identified by the EWS.

Section 1 may result in the identification of additional students in need of support, which may help such students receive the appropriate intervention to improve the academic performance of such students.

Differentiated Accountability (Section 4)

Present Situation

Current law holds school districts accountable for improving the academic performance of all students and for identifying and improving schools that fail to meet accountability standards.[32] The academic performance of all students has a significant effect on the state school system and SBE is required to equitably enforce the accountability requirements of the state school system and may impose state requirements on school districts in order to improve the academic performance of all districts, schools, and students.[33]

[30] Section 1001.42(18)(a), F.S.
[31] Early warning system is already a component of the school improvement plan for schools with a grade of "D" or "F." *See* Florida Department of Education, *Form SIP-1, School Improvement Plan* (Dec. 2014), *available at* https://www.flrules.org/gateway/readRefFile.asp?refId=4622&filename=SIP-1_2014-15.pdf (incorporated by reference in rule 6A-1.099811, F.A.C.).
[32] Section 1008.33(2)(c), F.S.
[33] Section 1008.33(3)(a), F.S, Art. IX, Fla. Const.

The DOE must annually identify each public school in need of intervention and support to improve student academic performance.[34] All schools earning a grade of "D" or "F" are schools in need of intervention and support.[35]

The SBE must adopt a differentiated matrix of intervention and support strategies for assisting public schools identified as in need of intervention.[36] The intervention and support strategies must address student performance and may include improvement planning, leadership quality improvement, educator quality improvement, professional development, curriculum alignment and pacing, and the use of continuous improvement and monitoring plans and processes.[37] In addition, the SBE may prescribe reporting requirements to review and monitor the progress of the schools.[38] The rule must define the intervention and support strategies for school improvement for schools earning a grade of "D" or "F" and the roles for the district and department.[39] The rule shall differentiate among schools earning consecutive grades of "D" or "F," or a combination thereof, and provide for more intense monitoring, intervention, and support strategies for these schools.[40]

Effect of Proposed Changes

Section 4 requires school districts to develop a school improvement plan for each school in the district with a school grade of "D" or "F."

This section clarifies conditions and establishes definitions that apply to schools subject to differentiated accountability. The bill requires the SBE rule regarding a differentiated matrix of intervention and support strategies for assisting public schools to define and clearly differentiate among:

- A "school-in-need", which means a school with a grade of "D," or which is in danger of earning a grade of "F," and which is in need of intervention and support.
- A "turnaround school", which means a school with a grade of "F" or two consecutive grades below a "C," and which is in need of intensive intervention and support, and which is implementing a district-managed turnaround or a different turnaround option.
- A "persistently low-performing school", which means a turnaround school that has been subject to a differentiated matrix of intensive intervention and support strategies for more than 3 consecutive years or a turnaround school that was closed within 2 years after submitting a notice of intent. The bill specifies that the SBE rule must define low-performing school to include, at a minimum, any school meeting the requirements of differentiated accountability.

Accordingly, the specified differentiation may assist schools in receiving appropriate supports and implementing relevant strategies to improve student performance outcomes.

[34] Section 1008.33(3)(b), F.S.
[35] Sections 1008.33(3)(b) and 1008.34, F.S.
[36] Section 1008.33(3)(c), F.S.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*

Turnaround Options (Sections 3, 4 and 5)

Present Situation

The SBE must apply the most intense intervention and support strategies to schools earning an "F."[41] Within a year after receiving the first "F," the school district must implement a differentiated matrix of intervention and support strategies, select a turnaround option, and submit a plan for implementing the turnaround option to the DOE.[42] The plan must be approved by the SBE and once approved, the turnaround option must be implemented in the following school year.[43]

Turnaround options available to school districts in current law include:[44]

- Converting the school to a district-managed turnaround school;[45]
- Reassigning students to another school and monitor the progress of each reassigned student;
- Closing the school and reopening the school as one or more charter schools, each with a governing board that has a demonstrated record of effectiveness;
- Contracting with an outside entity that has a demonstrated record of effectiveness to operate the school; or
- Implementing a hybrid of the above turnaround options or other turnaround models that have a demonstrated record of effectiveness.

The Commissioner of Education is required to assign a community assessment team to each school district or governing board with a school that earned a grade of "F," or 2 consecutive grades of "D."[46] The team is directed to review certain school performance data and make recommendations to the school district, the governing board, or to the SBE, about how to address low performance causes in the school improvement plan.[47]

Effect of Proposed Changes

Section 4 modifies turnaround options available to school districts by adding new options and revising existing options, giving priority to the first three new options. Section 4 adds the following first three options:

- Implement an extended school day with at least 1 hour of additional learning time.
- Enter into a formal agreement with a nonprofit organization with tax exempt status under the Internal Revenue Code to implement an integrated student support service model that provides students and families with access to specified wrap-around services. Districts implementing this option may be eligible for additional funding as provided in the General Appropriations Act. The wrap-around services must include, but are not limited to:
  - Health services;
  - After-school programs;

[41] Section 1008.33(4)(a), F.S.
[42] *Id.*
[43] *Id.*
[44] Section 1008.33(4)(b), F.S
[45] A school that earns a grade of "D" for 3 consecutive years must implement the district-managed turnaround option. Section 1008.33(5), F.S.
[46] Section 1008.345(6)(d), F.S.
[47] *Id.*

  - Drug prevention programs;
  - College and career readiness; and
  - Food and clothing banks.
- Implement a principal autonomy program school under a performance based contract and in accordance with proposal elements, criteria, and timelines established by the SBE and specifically tailored for a turnaround school. A school district using this option for its turnaround school is eligible to participate in, and receive the benefits of, the principal autonomy program for only the turnaround school.

Section 4 also creates an option to contract as a conversion charter school and deletes the existing hybrid turnaround option. However, school districts are authorized to implement a combination of the specified turnaround options.

Section 5 modifies an existing requirement for the Commissioner of Education to assign a community assessment team to a low-performing school by specifying that such team must be assigned to each school district or governing board with a turnaround school. The team must include intervention and support strategies in the recommendations that the team makes to the school board or the governing board, as applicable, and to the SBE.

Accordingly, section 5 provides turnaround schools with additional options to implement turnaround strategies.

Section 3 conforms a cross reference in s. 1002.332, F.S., resulting from changes made to s. 1008.33, F.S.

Implementation Schedule (Section 4)

Present Situation

Currently, a school that earns a grade of "F," or 3 consecutive grades of "D," must have a planning year followed by 2 full school years to implement the initial turnaround. Implementation of the turnaround option is no longer required if the school improves by at least one letter grade during the planning year.[48]

A school earning a grade of "F" or 3 consecutive grades of "D" that improves its letter grade must continue to implement strategies identified in its school improvement plan pursuant to law. The department must annually review implementation of the school improvement plan for 3 years to monitor the school's continued improvement.[49]

If a school with an "F" or 3 consecutive grades of "D" does not improve by at least one letter grade after 2 full years of implementing the turnaround option, the school district must select a different option and submit another implementation plan to the department for state board approval. Implementation of the new plan must begin the school year following the implementation period of the existing turnaround option, unless the SBE determines that the

[48] Section 1008.33(4)(c), F.S. *But see* 6A-1.099811(9)(a), F.A.C. (providing that a school district may discontinue implementing a turnaround plan only if it earns a school grade of "C" or higher).
[49] Section 1001.42(18)(a) and 1008.33(4)(d), F.S.

school is likely to improve a letter grade if additional time is provided to implement the existing turnaround option.[50]

Effect of Proposed Changes

Section 4 accelerates, by at least one school year, the timing and implementation of specific turnaround options. Specifically, section 4 requires a turnaround school to immediately, during its first full year after receiving the designation:

- Implement required intensive intervention and support strategies.
- Provide to DOE the negotiated memorandum of understanding with the bargaining agent in educational emergency circumstances, described below.
- Provide to DOE, by September 1, a district-managed turnaround plan that has been submitted to the SBE for approval and must be implemented for the remainder of the current school year and continue for one additional school year.

The modified timeframe for implementation of turnaround options may assist struggling schools implement appropriate intervention strategies timely.

Educational Emergency (Section 1)

Present Situation

Florida law authorizes district school boards to declare an emergency in cases in which one or more schools in the district are failing or are in danger of failing and negotiate special provisions of its contract with the appropriate bargaining units to free these failing schools from contract restrictions that limit the school's ability to implement programs and strategies needed to improve student performance.[51]

Effect of Proposed Changes

Section 1 specifies educational emergency conditions under which a district school board may negotiate provisions of its contract with appropriate bargaining units that must result in a memorandum of understanding regarding personnel decisions. The district school board is authorized to negotiate in cases in which one or more schools in the district have a grade of "D" or "F." Section 1 also permits a district school board, beginning in the 2018-2019 academic year, to negotiate in cases in which one or more schools in the district are currently subject to, or in danger of being subject to, a differentiated matrix of intervention and support strategies as a turnaround school consistent with Florida law.

This may strengthen the authority and flexibility of school districts facing certain circumstances.

[50] Section 1008.33(4)(e), F.S.
[51] Section 1001.42(21), F.S.

Charter School Requirements (Section 2)

Present Situation

Charter schools that earn a grade of "D" or "F" must develop a school improvement plan, which must be approved by the sponsor.[52] Corrective actions are required for charter schools earning three consecutive grades of "D," two consecutive grades of "D" followed by a grade of "F," or two nonconsecutive grades of "F" within a three-year period. Such a charter school may choose one of the following corrective actions: [53]

- Contract for educational services to be provided directly to students, instructional personnel, and school administrators;
- Contract with an outside entity with a track record of effectiveness to operate the school;
- Reorganize the school under a new director or principal who is authorized to hire new staff; or
- Voluntarily close the school.

The charter school must implement the corrective action in the school year following receipt of a third consecutive grade of "D," a grade of "F" following two consecutive grades of "D," or a second nonconsecutive grade of "F" within a 3-year period.[54] A corrective action is no longer required if the charter school improves by at least one letter grade. However, the school must continue to implement its school improvement plan.[55] If a charter school does not improve by at least one letter grade after two full school years of implementing a corrective action, the school must choose another action.[56]

Effect of Proposed Changes

Section 2 aligns charter school corrective action provisions with actions applied to traditional public schools. Specifically, this section:

- Defines a turnaround charter school as a charter school earning a grade of "F" or two consecutive grades below a "C."
- Requires each turnaround charter school to take corrective action.
- Requires a turnaround charter school to immediately implement it approved school improvement plan for the remainder of the current school year and continue implementing the plan for at least 1 full school year and select a corrective action specified in law, unless the sponsor waives the corrective action subject to condition as specified in law.[57]

[52] Section 1002.33(9)(n)1., F.S.
[53] Section 1002.33(9)(n)2.a., F.S.
[54] Section 1002.33(9)(n)2.b., F.S.
[55] Section 1002.33(9)(n)2.d., F.S.
[56] Section 1002.33(9)(n)2.c. and e., F.S. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action. The sponsor may waive corrective actions if it determines that the charter school is likely to improve its grade if additional time is given to implement the school improvement plan. The sponsor may also extend the implementation period for a corrective action based upon a similar standard. The sponsor may not waive or extend corrective actions if the charter school earns a second consecutive grade of "F" while in corrective action. *Id.* Unless an exception applies, such a charter school must be terminated by the sponsor. Section 1002.33(9)(n) 4, F.S.
[57] Section 1002.33(9)(n)2.c., F.S.

This may streamline the application of differentiated accountability to turnaround schools and turnaround charter schools.

The bill takes 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 bill modifies the current Florida Best and Brightest Teacher Scholarship Program by revising classroom teacher eligibility, adding school administrators and establishing eligibility criteria, and creating a one-time hiring bonus for newly hired teachers and administrators. This may increase the number of educators eligible for the award.

Funding for the Florida Best and Brightest Teacher and Principal Scholar Award Program is contingent upon an appropriation in the General Appropriations Act. SB 2500, the Senate General Appropriations Act, does not provide an appropriation for the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.42, 1002.33, 1002.332, 1008.33, and 1008.345.

This bill creates section 1012.732 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 25, 2017:
The committee substitute modifies school improvement and accountability measures that apply to public schools, including charter schools to:

- Require school districts to develop a school improvement plan for each school in the district with a school grade of "D" or "F."
- Expand the grade levels, indicators, and interventions addressed in a school district's early warning system to support student academic performance and engagement.
- Specify educational emergency conditions under which a school district may negotiate provisions of its contract with appropriate bargaining units, which must result in a memorandum of understanding regarding personnel decisions.
- Clarify conditions and establishing definitions that apply to schools subject to differentiated accountability.
- Accelerate by at least one school year, the timing and implementation of turnaround options specified in law.
- Revise the options and requirements that apply to turnaround traditional public schools and turnaround charter schools.
- Adds a criteria by which newly hired teachers and administrators may qualify for an award by being a college graduate with at least a 3.0 grade point average with at least 3 years' experience in a science-, technology-, engineering-, or mathematics- (STEM-) related field, who commits to meeting teacher certification requirements within 3 years and teaching in a STEM-related classroom at a Florida public school for at least 3 years.

CS by Education on April 3, 2017:
The committee substitute modifies the eligibility requirements for the Florida Best and Brightest Teacher and Principal Scholar Award Program by adding a way by which a classroom teacher and school administrator may satisfy the achievement eligibility requirement for the program award or bonus, as applicable. Specifically, the committee substitute authorizes a classroom teacher and school administrator to satisfy the achievement eligibility requirement by achieving a cumulative undergraduate or graduate grade point average of at least 3.5 on a 4.0 scale, as verified on the teacher's or administrator's official final transcript.

B. Amendments:

None.

By the Committee on Education; and Senator Simmons

581-03347-17 20171552c1

A bill to be entitled

An act relating to the Florida Best and Brightest Teacher and Principal Scholar Award Program; creating s. 1012.732, F.S.; creating the Florida Best and Brightest Teacher and Principal Scholar Award Program to be administered by the Department of Education; providing the intent and purpose of the program; providing eligibility requirements for classroom teachers and school administrators to participate in the program; providing timelines and requirements for program implementation; providing funding priorities; defining the term "school district"; requiring the State Board of Education to adopt rules; providing an effective date.

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

Section 1. Section 1012.732, Florida Statutes, is created to read:

1012.732 The Florida Best and Brightest Teacher and Principal Scholar Award Program.—

(1) INTENT.—The Legislature recognizes that, second only to parents, teachers and principals play the most critical roles within schools in preparing students to achieve a high level of academic performance. The Legislature further recognizes that research has linked student successes and performance outcomes to the academic achievements and performance accomplishments of the teachers and principals who most closely affect their classroom and school learning environments. Therefore, it is the

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intent of the Legislature to designate teachers and principals who have achieved high academic standards during their own education as Florida's best and brightest teacher and principal scholars.

(2) PURPOSE.—There is created the Florida Best and Brightest Teacher and Principal Scholar Award Program, as a performance-based scholarship award program, to be administered by the Department of Education. The performance-based award shall provide categorical funding for scholarships to be awarded to full-time classroom teachers, as defined in s. 1012.01(2)(a), and full-time school administrators, as defined in s. 1012.01(3)(c), excluding substitute teachers or substitute school administrators, who have demonstrated a high level of academic achievement and performance.

(3) ELIGIBILITY.—To be eligible for a scholarship, a full-time classroom teacher or full-time school administrator must be employed on an annual contract or probationary contract pursuant to s. 1012.335, participate in the school district's performance salary schedule pursuant to s. 1012.22, and meet at least one of the achievement requirements under paragraph (a) and at least one of the performance requirements under paragraph (b).

(a) Achievement requirements.—

1. For a classroom teacher, a score at or above the 90th percentile on the Florida Teacher Certification Examination in a subject that he or she is teaching;

2. For a school administrator, a score at or above the 90th percentile on the Florida Educational Leadership Examination;

3. For a classroom teacher or school administrator, a composite score at or above the 80th percentile on either the

SAT or the ACT based on the National Percentile Ranks in effect when the classroom teacher or school administrator took the assessment;

4. For a classroom teacher or school administrator, a composite score on the GRE, LSAT, GMAT, or MCAT at or above a score adopted by the State Board of Education; or

5. For a classroom teacher or school administrator, a cumulative undergraduate or graduate grade point average of at least 3.5 on a 4.0 scale, as verified on the teacher's or administrator's official final college transcript.

(b) Performance requirements.—The classroom teacher or school administrator:

1. Must have been evaluated as highly effective pursuant to s. 1012.34 in the school year immediately preceding the year in which the scholarship will be awarded;

2. If he or she works in a low-performing school or a school that was designated by the department as low-performing within the previous 2 years and commits, pursuant to State Board of Education rule, to working at the school for at least 3 years, must have been evaluated as highly effective pursuant to s. 1012.34 in the school year immediately preceding the first year in which the scholarship will be awarded and maintain a highly effective evaluation rating in at least two of every three annual performance evaluations, based on a rolling 3-year period; or

3. Must be newly hired by the district school board, must not have been evaluated pursuant to s. 1012.34, and must have met at least one of the following conditions:

a. Be a recipient of the Florida Prepaid Tuition

Scholarship Program pursuant to s. 1009.984 who graduates with a minimum 3.0 grade point average and commit, pursuant to State Board of Education rule, to working in a Florida public school for at least 3 years;

b. Have completed the college reach-out program pursuant to s. 1007.34 and graduated with a minimum 3.0 grade point average, and commit, pursuant to State Board of Education rule, to working in a Florida public school for at least 3 years; or

c. Be a Florida college or university graduate of a Florida teacher preparation program approved pursuant to s. 1004.04, have graduated with a minimum 3.0 grade point average, and commit, pursuant to State Board of Education rule, to working in a critical teacher shortage area under s. 1012.07 at a Florida public school for at least 3 years.

(4) IMPLEMENTATION.—In order to implement and administer the program, the following timelines and requirements apply:

(a) To demonstrate eligibility for an award, an eligible classroom teacher or school administrator, as applicable, must submit to the school district, no later than November 1, an official record of his or her achievement of the eligibility requirements specified in paragraph (3)(a). Once a classroom teacher or school administrator is deemed eligible by the school district, including teachers deemed eligible for the Florida Best and Brightest Teacher Scholarship Program in the 2015-2016 or 2016-2017 fiscal years pursuant to s. 25 of chapter 2016-62, Laws of Florida, the classroom teacher or school administrator remains eligible as long as he or she remains employed by the school district as a full-time classroom teacher or full-time school administrator at the time of the award and continues to

meet the conditions specified under this section.

(b) Annually, by December 1, each school district shall submit to the department the number of eligible classroom teachers and school administrators who qualify for the scholarship.

(c) Annually, by February 1, the department shall disburse scholarship funds to each school district for each eligible classroom teacher and school administrator to receive a scholarship as provided in the General Appropriations Act.

(d) Annually, by April 1, each school district shall award the scholarship to each eligible classroom teacher and school administrator.

(5) FUNDING.—A scholarship in the amount provided in the General Appropriations Act shall be awarded to every eligible classroom teacher and school administrator.

(a) If the number of eligible classroom teachers and school administrators exceeds the total appropriation authorized in the General Appropriations Act, the department shall prorate the per-scholar scholarship award amount, except that prior to the distribution of funds, the following priorities apply:

1. Classroom teachers and school administrators who commit, pursuant to State Board of Education rule, to work in a low-performing school and meet the performance requirements of subparagraph (3)(b)2., shall receive an award equal to a full scholarship award amount. Classroom teachers and school administrators who do not fulfill the commitment made pursuant to subparagraph (3)(b)2. may not receive this priority; and

2. Newly hired classroom teachers and school administrators who commit, pursuant to State Board of Education rule, to work

in a Florida public school and meet the performance requirements under subparagraph (3)(b)3., shall receive a one-time hiring bonus of up to $10,000. Classroom teachers and school administrators who do not fulfill the commitment made pursuant to subparagraph (3)(b)3. may not receive this priority.

(b) Newly hired classroom teachers and newly hired school administrators who initially participate in the program pursuant to subparagraph (3)(b)3. may only receive the one-time hiring bonus under subparagraph (a)2. In subsequent school years, such classroom teachers and school administrators may earn a scholarship award pursuant to subparagraph (3)(b)1. or subparagraph (3)(b)2., if they also maintain their initial commitments.

(6) DEFINITION.—For purposes of this section, the term "school district" includes the Florida School for the Deaf and the Blind and charter school governing boards.

(7) RULES.—The State Board of Education shall expeditiously adopt rules to implement this section.

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 18, 2017

I respectfully request that **Senate Bill 1552**, relating to Florida Best and Brightest Teacher and Principal Scholar Award Program, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

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

SB 1552
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Best & Brightest

Name Brittney Hunt

Job Title Policy Director

Address 136 S. Bronough St. Phone 521-1200
Street

Tall FL 32301 Email bhunt@flchamber.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida 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.

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 25 2017
Meeting Date

CS/SB 1552
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Marie-Claire Leman

Job Title _____

Address 1911 Wahalaw Ct
Street

Phone _____

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 Common Ground

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)

4/25/2017
Meeting Date

Topic _____ Bill Number 1582 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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.

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

S-001 (10/20/11)

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

1552
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Spencer Pylant

Job Title Communications & Gov't Relations Liaison

Address 7227 Land O' Lakes Blvd.
Street

Land O' Lakes FL 34638
City *State* *Zip*

Phone 813-794-2259

Email spylant@pasco.k12.fl.us

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Pasco County Schools

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)

4/25
Meeting Date

1552
Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Kelly Quinten

Job Title Legislative Advocate

Address 540 Beverly CT
Street

Phone 772 204 1792

Tallahassee FL 32301
City *State* *Zip*

Email lwvfadvocacy@gmail.com

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.

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 766 (597786)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Rodriguez
SUBJECT:	Payment Card Offenses
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	**Fav/CS**
2.	Harkness	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Harkness	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 766 addresses the unlawful practice of "skimming" (fraudulently obtaining private information from someone's payment card). Specifically, the bill:

- Modifies the offense of fraudulent use of a scanning device to also punish fraudulent use of a skimming device, and specifies that information unlawfully accessed includes information encoded on a computer chip or other storage mechanism of a payment card.
- Modifies the offense of fraudulent use of a reencoder to indicate that the reencoder places information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card onto a computer chip, magnetic strip or stripe, or other storage mechanism of a different card.
- Provides that it is a third degree felony to knowingly possess, sell, or deliver a skimming device, provides that this offense does not apply to specified officials, and provides that this offense is also subject to the Florida Contraband Forfeiture Act.

The Criminal Justice Impact Conference (CJIC) estimates the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact.

The bill takes effect October 1, 2017.

II. Present Situation:

Skimming

The practice of "skimming" involves obtaining private information from someone's payment card used in an otherwise normal transaction, such as using an ATM.[1] A person engaging in this practice can obtain a victim's card number in different ways, including photocopying receipts, copying a PIN code, or using an electronic scanning device or reencoder to swipe and store a victim's payment card numbers or transfer the data or information to another card.[2] Skimming can occur at a restaurant or bar where the skimmer has possession of the victim's card out of his or her immediate view.[3] Similarly, skimming can also occur at gas stations when a third-party cardreading device is installed either outside or inside a fuel dispenser[4] or other card-swiping terminal.[5]

Florida Law on Unlawful Use of a Scanning Device or Reencoder

Section 817.625(2), F.S., provides that it a crime to use:

- A scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.
- A reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the payment card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

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[1] "Taking a Trip to the ATM?" (July 14, 2011), Federal Bureau of Investigation , *available at* https://www.fbi.gov/news/stories/atm-skimming (last visited on March 24, 2017). *See also Arnauta v. State*, 125 So.3d 1028, 1029 (Fla. 4th DCA 2013) (noting, in part, that charges were filed against the defendant after police discovered that the defendant had used an ATM skimming device to withdraw money from customer accounts and after police searched the defendant's residence, storage units and vehicle, and discovered a multitude of ATM parts, molds, ATM keypads, circuit boards, blank bank credit cards, magnetic strips, and bank card readers/writers).

[2] Feinberg, Ashley, "The Evolution of ATM Skimmers" (August 27, 2014), *Gizmodo*, *available at* http://gizmodo.com/the-terrifying-evolution-of-atm-skimmers-1626794130 (last visited on March 24, 2017).

[3] Denny, Dawn, "Cashier Linked to Credit Card Skimming Scam, Police Say" (May 20, 2014), KXAN, *available at* http://kxan.com/2014/05/20/restaurant-cashier-linked-to-credit-card-skimming-scam-police-say/ (last visited on March 24, 2017).

[4] Jacobson, Susan, "State Finds 103 Credit-Card Skimmers in 3-month Inspection of Gas Pumps" (May 19, 2015), *Orlando Sentinel*, *available at* http://www.orlandosentinel.com/business/os-gas-pump-skimmers-20150519-story.html (last visited on March 24, 2017).

[5] Musil, Steven, "13 Indicted in $2M Gas Station Card-Skimming Scheme" (January 22, 2014), CNET, *available at* https://www.cnet.com/news/13-indicted-in-2m-gas-station-card-skimming-scheme/ (last visited on March 24, 2017).

A first violation of s. 817.625(2), F.S., is a third degree felony;[6] a second or subsequent violation of this subsection is a second-degree felony.[7] A violation of s. 817.625(2), F.S., is also subject to the Florida Contraband Forfeiture Act (ss. 932.07 – 932.7062, F.S.).[8]

Section 817.625, F.S., provides the following definitions of relevant terms:

- "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.
- "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.
- "Payment card" means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.
- "Merchant" means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.[9]

III. Effect of Proposed Changes:

Section 1 amends s. 817.625(2)(a)1., F.S., which currently punishes fraudulent use of a scanning device. The bill modifies this offense to also punish fraudulent use of a skimming device. It also specifies that information unlawfully accessed includes information encoded on a computer chip or other storage mechanism of a payment card.

Section 817.625(2)(a)2., F.S., which currently punishes fraudulent use of a reencoder, is modified to indicate that the reencoder places information encoded on a computer chip, magnetic strip or stripe, or other storage mechanism of a payment card onto a computer chip, magnetic strip or stripe, or other storage mechanism of a different card. The current offense does not mention the terms "computer chip" and "other storage mechanism."

As previously noted, a first violation of s. 817.625(2)(a)1., F.S., or s. 817.625(2)(a)2., F.S., is a third degree felony; a second or subsequent violation is a second degree felony. A violation is also subject to the Florida Contraband Forfeiture Act (ss. 932.07 – 932.7062, F.S.).

Section 817.625(2)(c), F.S., is created, which makes it a third degree felony to knowingly possess, sell, or deliver a skimming device. This paragraph does not apply to the following individuals while acting within the scope of their official duties:

- An employee, officer, or agent of:

[6] Section 817.625(2)(a), F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S. This offense is ranked as a Level 4 offense in s. 921.0022(3)(d), F.S., of the Criminal Punishment Code (Code) offense severity ranking chart.
[7] Section 817.625(2)(b), F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S. This offense is ranked as a Level 5 offense in s. 921.0022(3)(e), F.S.
[8] Section 817.625(2)(b), F.S.
[9] Section 817.625(a) – (d), F.S.

  - A law enforcement agency or criminal prosecuting authority for the state or the federal government;
  - The state courts system as defined in s. 25.382, F.S., or the federal court system; or
  - An executive branch agency in this state.
- A financial or retail security investigator employed by a merchant.

A person who commits a violation of paragraph (2)(c) is also subject to the Florida Contraband Forfeiture Act (ss. 932.07 – 932.7062, F.S.).

The bill makes the following changes regarding definitions of relevant terms:
- Expands the current definition of "scanning device" to include information encoded on a computer chip or other storage mechanism, or from another device that directly reads the information from a payment card.
- Expands the current definition of "reencoder" to include information encoded on a computer chip or other storage mechanism.
- Provides that the terms "scanning device" and "reencoder" do not include a skimming device.
- Defines "skimming device" as a self-contained device that:
  - Is designed to read and store in the device's internal memory information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card or from another device that directly reads the information from a payment card; and
  - Is incapable of processing the payment card information stored for the purpose of obtaining, purchasing, or receiving goods, services, money, or anything else of value from a merchant.

Section 2 amends s. 921.0022, F.S., the Criminal Punishment Code offense severity ranking chart, to rank the new skimming device offense (s. 817.625(2)(c), F.S.) in Level 4. The bill also makes technical conforming changes to the description of s. 817.625(2)(a), F.S., in the chart.

Section 3 provides that the bill takes effect 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 Criminal Justice Impact Conference (CJIC) met on March 2, 2017 and determined the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).[10]

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 817.625 and 921.0022.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal Justice and Civil Justice on April 18, 2017:
The committee substitute removes specific reference to a subparagraph that refers to payment card information that a skimming device reads and stores on a skimming device.

CS by Criminal Justice on April 3, 2017:
The committee substitute:

- Modifies the offense of fraudulent use a scanning device to also punish fraudulent use of a skimming device, and specifies that information unlawfully accessed includes information encoded on a computer chip or other storage mechanism of a payment card.
- Modifies the offense of fraudulent use of a reencoder to indicate that the reencoder places information encoded on a computer chip, magnetic strip or stripe, or other

[10] Office of Economic and Demographic Research, The Florida Legislature, *Criminal Justice Impact Conference, SB 766* (Mar. 2, 2017).

storage mechanism of a payment card onto the computer chip, magnetic strip or stripe, or other storage mechanism of a different card.

- Provides that it is a third degree felony to knowingly possess, sell, or deliver a skimming device, provides that this offense does not apply to specified officials, provides that this offense is also subject to the Florida Contraband Forfeiture Act, and ranks this offense in Level 4 of the Code offense severity ranking chart.
- Modifies the current definitions of "scanning device" and "reencoder" and defines "skimming device."

B. Amendments:

None.

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576-04056-17

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

A bill to be entitled

An act relating to payment card offenses; amending s. 817.625, F.S.; revising definitions; revising terminology; revising the offenses of using a scanning device or reencoder with the intent to defraud; prohibiting the use of a skimming device with intent to defraud; prohibiting the possession, sale, or delivery of a skimming device; providing criminal penalties; amending s. 921.0022, F.S.; ranking the offense of possessing, selling, or delivering a skimming device on level 4 of the offense severity ranking chart; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 817.625, Florida Statutes, is amended to read:

817.625 Use of scanning device, skimming device, or reencoder to defraud; possession of skimming device; penalties.—

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

(d) ~~(a)~~ "Scanning device" means a scanner, reader, or any other electronic device that may be ~~is~~ used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card or from another device that directly reads the information from a

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576-04056-17

payment card. The term does not include a skimming device.

(c) ~~(b)~~ "Reencoder" means an electronic device that places encoded information from the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card onto the computer chip, magnetic strip or stripe, or other storage mechanism of a different payment card. The term does not include a skimming device.

(b) ~~(c)~~ "Payment card" means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

(a) ~~(d)~~ "Merchant" means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.

(e) "Skimming device" means a self-contained device that:

1. Is designed to read and store in the device's internal memory information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card or from another device that directly reads the information from a payment card; and

2. Is incapable of processing the payment card information for the purpose of obtaining, purchasing, or receiving goods, services, money, or anything else of value from a merchant.

(2)(a) It is a felony of the third degree, punishable as

provided in s. 775.082, s. 775.083, or s. 775.084, for a person to use:

1. A scanning device or skimming device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

2. A reencoder to place information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card onto the computer chip, magnetic strip or stripe, or other storage mechanism of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

(b) A ~~Any~~ person who violates subparagraph (a)1. or subparagraph (a)2. a second or subsequent time commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for a person to knowingly possess, sell, or deliver a skimming device. This paragraph does not apply to the following individuals while acting within the scope of their official duties:

1. An employee, officer, or agent of:

a. A law enforcement agency or criminal prosecuting authority for the state or the federal government;

b. The state courts system as defined in s. 25.382 or the federal court system; or

c. An executive branch agency in this state.

2. A financial or retail security investigator employed by a merchant.

(d) ~~(c)~~ A ~~Any~~ person who commits a violation of this subsection is ~~violates subparagraph (a)1. or subparagraph (a)2.~~ ~~shall~~ also ~~be~~ subject to ~~the provisions of~~ ss. 932.701-932.7062.

Section 2. Paragraphs (d) and (e) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.

499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.

784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon

		within 1,000 feet of a school.
790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.

812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000 or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device<u>, skimming device,</u> or reencoder.
<u>817.625(2)(c)</u>	<u>3rd</u>	<u>Possession, sale, or delivery of skimming device.</u>
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any

		registered horse or cattle.
837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or

		bond jumping).
847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the

		purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.

790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.

812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification

		information of 10 or more persons.
817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and

		custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver

		cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1.,

		(2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Section 3. 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 766
INTRODUCER:	Appropriations Committee; Criminal Justice Committee; and Senator Rodriguez
SUBJECT:	Payment Card Offenses
DATE:	April 25, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	**Fav/CS**
2.	Harkness	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Harkness	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 766 addresses the unlawful practice of "skimming" (fraudulently obtaining private information from someone's payment card). Specifically, the bill:

- Modifies the offense of fraudulent use of a scanning device to also punish fraudulent use of a skimming device, and specifies that information unlawfully accessed includes information encoded on a computer chip or other storage mechanism of a payment card.
- Modifies the offense of fraudulent use of a reencoder to indicate that the reencoder places information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card onto a computer chip, magnetic strip or stripe, or other storage mechanism of a different card.
- Provides that it is a third degree felony to knowingly possess, sell, or deliver a skimming device, provides that this offense does not apply to specified officials, and provides that this offense is also subject to the Florida Contraband Forfeiture Act.

The Criminal Justice Impact Conference (CJIC) estimates the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact.

The bill takes effect October 1, 2017.

II. Present Situation:

Skimming

The practice of "skimming" involves obtaining private information from someone's payment card used in an otherwise normal transaction, such as using an ATM.[1] A person engaging in this practice can obtain a victim's card number in different ways, including photocopying receipts, copying a PIN code, or using an electronic scanning device or reencoder to swipe and store a victim's payment card numbers or transfer the data or information to another card.[2] Skimming can occur at a restaurant or bar where the skimmer has possession of the victim's card out of his or her immediate view.[3] Similarly, skimming can also occur at gas stations when a third-party cardreading device is installed either outside or inside a fuel dispenser[4] or other card-swiping terminal.[5]

Florida Law on Unlawful Use of a Scanning Device or Reencoder

Section 817.625(2), F.S., provides that it a crime to use:

- A scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.
- A reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the payment card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

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[1] "Taking a Trip to the ATM?" (July 14, 2011), Federal Bureau of Investigation , *available at* https://www.fbi.gov/news/stories/atm-skimming (last visited on March 24, 2017). *See also Arnauta v. State*, 125 So.3d 1028, 1029 (Fla. 4th DCA 2013) (noting, in part, that charges were filed against the defendant after police discovered that the defendant had used an ATM skimming device to withdraw money from customer accounts and after police searched the defendant's residence, storage units and vehicle, and discovered a multitude of ATM parts, molds, ATM keypads, circuit boards, blank bank credit cards, magnetic strips, and bank card readers/writers).

[2] Feinberg, Ashley, "The Evolution of ATM Skimmers" (August 27, 2014), *Gizmodo*, *available at* http://gizmodo.com/the-terrifying-evolution-of-atm-skimmers-1626794130 (last visited on March 24, 2017).

[3] Denny, Dawn, "Cashier Linked to Credit Card Skimming Scam, Police Say" (May 20, 2014), KXAN, *available at* http://kxan.com/2014/05/20/restaurant-cashier-linked-to-credit-card-skimming-scam-police-say/ (last visited on March 24, 2017).

[4] Jacobson, Susan, "State Finds 103 Credit-Card Skimmers in 3-month Inspection of Gas Pumps" (May 19, 2015), *Orlando Sentinel*, *available at* http://www.orlandosentinel.com/business/os-gas-pump-skimmers-20150519-story.html (last visited on March 24, 2017).

[5] Musil, Steven, "13 Indicted in $2M Gas Station Card-Skimming Scheme" (January 22, 2014), CNET, *available at* https://www.cnet.com/news/13-indicted-in-2m-gas-station-card-skimming-scheme/ (last visited on March 24, 2017).

A first violation of s. 817.625(2), F.S., is a third degree felony;[6] a second or subsequent violation of this subsection is a second-degree felony.[7] A violation of s. 817.625(2), F.S., is also subject to the Florida Contraband Forfeiture Act (ss. 932.07 – 932.7062, F.S.).[8]

Section 817.625, F.S., provides the following definitions of relevant terms:

- "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.
- "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.
- "Payment card" means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.
- "Merchant" means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.[9]

III. Effect of Proposed Changes:

Section 1 amends s. 817.625(2)(a)1., F.S., which currently punishes fraudulent use of a scanning device. The bill modifies this offense to also punish fraudulent use of a skimming device. It also specifies that information unlawfully accessed includes information encoded on a computer chip or other storage mechanism of a payment card.

Section 817.625(2)(a)2., F.S., which currently punishes fraudulent use of a reencoder, is modified to indicate that the reencoder places information encoded on a computer chip, magnetic strip or stripe, or other storage mechanism of a payment card onto a computer chip, magnetic strip or stripe, or other storage mechanism of a different card. The current offense does not mention the terms "computer chip" and "other storage mechanism."

As previously noted, a first violation of s. 817.625(2)(a)1., F.S., or s. 817.625(2)(a)2., F.S., is a third degree felony; a second or subsequent violation is a second degree felony. A violation is also subject to the Florida Contraband Forfeiture Act (ss. 932.07 – 932.7062, F.S.).

Section 817.625(2)(c), F.S., is created, which makes it a third degree felony to knowingly possess, sell, or deliver a skimming device. This paragraph does not apply to the following individuals while acting within the scope of their official duties:

- An employee, officer, or agent of:

[6] Section 817.625(2)(a), F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S. This offense is ranked as a Level 4 offense in s. 921.0022(3)(d), F.S., of the Criminal Punishment Code (Code) offense severity ranking chart.
[7] Section 817.625(2)(b), F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to $10,000, or both. Sections 775.082 and 775.083, F.S. This offense is ranked as a Level 5 offense in s. 921.0022(3)(e), F.S.
[8] Section 817.625(2)(b), F.S.
[9] Section 817.625(a) – (d), F.S.

  - A law enforcement agency or criminal prosecuting authority for the state or the federal government;
  - The state courts system as defined in s. 25.382, F.S., or the federal court system; or
  - An executive branch agency in this state.
- A financial or retail security investigator employed by a merchant.

A person who commits a violation of paragraph (2)(c) is also subject to the Florida Contraband Forfeiture Act (ss. 932.07 – 932.7062, F.S.).

The bill makes the following changes regarding definitions of relevant terms:
- Expands the current definition of "scanning device" to include information encoded on a computer chip or other storage mechanism, or from another device that directly reads the information from a payment card.
- Expands the current definition of "reencoder" to include information encoded on a computer chip or other storage mechanism.
- Provides that the terms "scanning device" and "reencoder" do not include a skimming device.
- Defines "skimming device" as a self-contained device that:
  - Is designed to read and store in the device's internal memory information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card or from another device that directly reads the information from a payment card; and
  - Is incapable of processing the payment card information stored for the purpose of obtaining, purchasing, or receiving goods, services, money, or anything else of value from a merchant.

Section 2 amends s. 921.0022, F.S., the Criminal Punishment Code offense severity ranking chart, to rank the new skimming device offense (s. 817.625(2)(c), F.S.) in Level 4. The bill also makes technical conforming changes to the description of s. 817.625(2)(a), F.S., in the chart.

Section 3 provides that the bill takes effect 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 Criminal Justice Impact Conference (CJIC) met on March 2, 2017 and determined the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).[10]

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 817.625 and 921.0022.

IX. Additional Information:

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

CS/CS by Appropriations on April 25, 2017:
The committee substitute removes specific reference to a subparagraph that refers to payment card information that a skimming device reads and stores on a skimming device.

CS by Criminal Justice on April 3, 2017:
The committee substitute:

- Modifies the offense of fraudulent use a scanning device to also punish fraudulent use of a skimming device, and specifies that information unlawfully accessed includes information encoded on a computer chip or other storage mechanism of a payment card.
- Modifies the offense of fraudulent use of a reencoder to indicate that the reencoder places information encoded on a computer chip, magnetic strip or stripe, or other

[10] Office of Economic and Demographic Research, The Florida Legislature, *Criminal Justice Impact Conference, SB 766* (Mar. 2, 2017).

storage mechanism of a payment card onto the computer chip, magnetic strip or stripe, or other storage mechanism of a different card.

- Provides that it is a third degree felony to knowingly possess, sell, or deliver a skimming device, provides that this offense does not apply to specified officials, provides that this offense is also subject to the Florida Contraband Forfeiture Act, and ranks this offense in Level 4 of the Code offense severity ranking chart.
- Modifies the current definitions of "scanning device" and "reencoder" and defines "skimming device."

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Rodriguez

591-03355-17 2017766c1

A bill to be entitled

An act relating to payment card offenses; amending s. 817.625, F.S.; revising definitions; revising terminology; revising the offenses of using a scanning device or reencoder with the intent to defraud; prohibiting the use of a skimming device with intent to defraud; prohibiting the possession, sale, or delivery of a skimming device; providing criminal penalties; amending s. 921.0022, F.S.; ranking the offense of possessing, selling, or delivering a skimming device on level 4 of the offense severity ranking chart; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 817.625, Florida Statutes, is amended to read:

817.625 Use of scanning device, skimming device, or reencoder to defraud; possession of skimming device; penalties.—

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

(d) ~~(a)~~ "Scanning device" means a scanner, reader, or any other electronic device that may be ~~is~~ used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card or from another device that directly reads the information from a payment card. The term does not include a skimming device.

(c) ~~(b)~~ "Reencoder" means an electronic device that places

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encoded information from the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card onto the computer chip, magnetic strip or stripe, or other storage mechanism of a different payment card. The term does not include a skimming device.

(b) ~~(c)~~ "Payment card" means a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

(a) ~~(d)~~ "Merchant" means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.

(e) "Skimming device" means a self-contained device that:

1. Is designed to read and store in the device's internal memory information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card or from another device that directly reads the information from a payment card; and

2. Is incapable of processing the payment card information stored under subparagraph 1. for the purpose of obtaining, purchasing, or receiving goods, services, money, or anything else of value from a merchant.

(2)(a) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for a person

to use:

1. A scanning device or skimming device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

2. A reencoder to place information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card onto the computer chip, magnetic strip or stripe, or other storage mechanism of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant.

(b) A ~~Any~~ person who violates subparagraph (a)1. or subparagraph (a)2. a second or subsequent time commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for a person to knowingly possess, sell, or deliver a skimming device. This paragraph does not apply to the following individuals while acting within the scope of their official duties:

1. An employee, officer, or agent of:

a. A law enforcement agency or criminal prosecuting authority for the state or the federal government;

b. The state courts system as defined in s. 25.382 or the

federal court system; or

c. An executive branch agency in this state.

2. A financial or retail security investigator employed by a merchant.

(d) ~~(c)~~ A ~~Any~~ person who commits a violation of this subsection is ~~violates subparagraph (a)1. or subparagraph (a)2. shall~~ also ~~be~~ subject to ~~the provisions of~~ ss. 932.701-932.7062.

Section 2. Paragraphs (d) and (e) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.

499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
784.075	3rd	Battery on detention or commitment facility staff.
784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
784.081(3)	3rd	Battery on specified official or employee.

784.082(3)	3rd	Battery by detained person on visitor or other detainee.
784.083(3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
787.07	3rd	Human smuggling.
790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.

790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
790.115(2)(c)	3rd	Possessing firearm on school property.
800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
810.06	3rd	Burglary; possession of tools.
810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
812.014(2)(c)3.	3rd	Grand theft, 3rd degree $10,000

		or more but less than $20,000.
812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen $300 or more.
817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
817.568(2)(a)	3rd	Fraudulent use of personal identification information.
817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
817.625(2)(c)	3rd	Possession, sale, or delivery of skimming device.
828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.

837.02(1)	3rd	Perjury in official proceedings.
837.021(1)	3rd	Make contradictory statements in official proceedings.
838.022	3rd	Official misconduct.
839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
843.021	3rd	Possession of a concealed handcuff key by a person in custody.
843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).

847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
914.14(2)	3rd	Witnesses accepting bribes.
914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
918.12	3rd	Tampering with jurors.
934.215	3rd	Use of two-way communications device to facilitate commission of a crime.

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.

440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.

812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.

817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or

		death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d),

		(2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8.,

		(2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Section 3. This act shall take effect October 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

April 25, 2017 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 766

Meeting Date *Bill Number (if applicable)*

Topic Payment Card Offenses

Amendment Barcode (if applicable)

Name Chief Jeffrey Chudnow

Job Title Chief of Police

Address 2636 Mitcham Drive Phone 850-219-3631

Street

Tallahassee FL 32308 Email bhoward@fpca.com

City *State* *Zip*

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

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

Representing The Florida Police Chiefs 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:	PCS/CS/SB 1104 (445720)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources); Environmental Preservation and Conservation Committee; and Senator Perry
SUBJECT:	Resource Recovery and Management
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	**Fav/CS**
2.	Reagan	Betta	AEN	**Recommend: Fav/CS**
3.	Reagan	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1104 adds pyrolysis facilities to those materials and facilities that are exempt from solid waste regulations if a majority of the recovered materials at a facility are demonstrated to be sold, used, or reused within one year. The bill specifies that the phrase "used or reused" includes, but is not limited to, the conversion by gasification or pyrolysis of post-use polymers into crude oil, fuels, feedstocks, or other raw materials or intermediate or final products.

The bill adds new definitions for the following terms related to the bill's addition of pyrolysis facilities to those materials and facilities that are eligible for exemption from solid waste regulations:

- Gasification to fuels, chemicals, and feedstocks;
- Post-use polymers;
- Pyrolysis; and
- Pyrolysis facility.

The bill also amends existing definitions of terms to add references based on the exemption from solid waste regulations for converting post-use polymers by gasification or pyrolysis to fuels, chemicals, and feedstocks.

Finally, the bill provides that a recovered materials dealer may process recovered materials at a pyrolysis facility to satisfy local government registration and reporting requirements for a recovered materials business.

This bill may have a positive fiscal impact on businesses, including governmental entities, operating recovered materials processing facilities that convert recovered materials by pyrolysis or gasification to fuels, chemicals, and feedstocks by exempting them from solid waste regulations.

Under the bill, the Department of Environmental Protection may incur costs relating to rulemaking to conform to the provisions of this legislation. These costs are expected to be insignificant and can be absorbed within current resources.

II. Present Situation:

Gasification

Gasification is a manufacturing process that converts material containing carbon—such as coal, petroleum coke, biomass, or waste—into synthesis gas (syngas) by creating a chemical reaction with the material at high temperatures, without combustion, with a controlled amount of oxygen and/or steam. Gasification may be used to produce electricity, chemicals, fuels, fertilizers, plastics, and other products. The U.S. Department of Energy believes gasification is a method to reduce our nation's dependence on foreign oil and provide a clean, carbon capture–ready source of energy.[1]

Recently, efforts have increased to utilize gasification to convert municipal solid waste (MSW) into energy rather than traditional incineration. Incineration uses MSW as a fuel to create heat and electricity by burning the MSW with high volumes of air to form carbon dioxide and heat. Waste-to-energy plants then use these hot gases to make steam used to generate electricity. During the process, toxins escape in the exhaust steam.[2]

The MSW is not a fuel in the gasification process, but rather is a feedstock[3] for a high temperature chemical conversion process. In the gasifier, MSW reacts with little or no oxygen, breaking down the feedstock into simple molecules and converting them into syngas. Instead of making just heat and electricity as is done with incineration, the syngas produced by gasification can be turned into commercial products such as transportation fuels, chemicals, and fertilizers. Further, the gasification process controls the release of toxins by inhibiting the formation of

[1] Gasification and Syngas Technologies Council, *The Gasification Process*, http://www.gasification-syngas.org/technology/the-gasification-process/ (last visited March 23, 2017); U.S. Department of Energy, *National Energy Technology Laboratory, What is Gasification?* https://www.netl.doe.gov/research/coal/energy-systems/gasification/publications/photo#whatis (last visited March 23, 2017).
[2] Gasification and Syngas Technologies Council, *Gasification v. Incineration*, http://www.gasification-syngas.org/applications/gasification-vs-incineration/ (last visited March 21, 2017).
[3] Feedstock is raw material supplied to a machine or processing plant. Merriam-Webster, *Feedstock*, https://www.merriam-webster.com/dictionary/feedstock (last visited March 23, 2017).

dioxins or furans by limiting oxygen in the chemical reaction. Lastly, the ash from gasification may be used to make cement, roofing shingles, asphalt filler, and material for sandblasting.[4]

Pyrolysis

Pyrolysis is the heating of a material, such as plastics, at high temperatures in the absence of oxygen. Sometimes this process includes the introduction of pressure or water. Without oxygen, the material does not combust, but rather the chemical compounds that make up the material thermally decompose into gases and oil. Pyrolysis oil may be used directly as fuel or further refined into diesel or jet fuel.[5]

Due to the increased demand for plastics and fuels and limited space in solid waste facilities, solid waste managers have increased efforts to employ pyrolysis on non-recycled plastics. Pyrolysis may be used to decrease the need to dispose plastics in landfills and create a renewable source of energy and fuels.[6] The fuel produced from the pyrolysis of plastics does not contain sulphur because the plastic feedstock does not contain sulphur.[7] Because pyrolysis does not incinerate the plastic waste, the emission of harmful compounds is reduced.[8]

Solid Waste Regulation

"Solid waste" is sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.[9]

The Department of Environmental Protection (DEP) implements and enforces the state's solid waste management program.[10] The solid waste management program includes a waste tire management program,[11] administration of solid waste grant programs,[12] and the classification, construction, operation, maintenance, and closure of solid waste management facilities.[13]

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[4] Gasification and Syngas Technologies Council, *Gasification v. Incineration*, http://www.gasification-syngas.org/applications/gasification-vs-incineration/ (last visited March 23, 2017).
[5] Whole System Foundation, *Recycling and Pyrolysis of Plastic*, http://www.whole-systems.org/recycling_and_pyrolysis_of_plastic.html (last visited March 22, 2017).
[6] Feng Gao, *Pyrolysis of Waste Plastics into Fuels*, 6, *available at* https://ir.canterbury.ac.nz/bitstream/handle/10092/4303/Thesis_fulltext.pdf;jsessionid=75F7FC1942BA6D076AE426687A9FD20F?sequence=1 (last visited March 22, 2017).
[7] *Id.* at 7.
[8] Debora Almeida and Maria de Fatima Marques, *Thermal and catalytic pyrolysis of plastic waste*, http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104-14282016000100007 (last visited March 21, 2017).
[9] Section 403.703(32), F.S.
[10] Section 403.705, F.S.
[11] Section 403.717, F.S.; Fla. Admin. Code Ch. 62-701.
[12] Section 403.7095, F.S; Fla. Admin. Code Ch. 62-716.
[13] Section 403.703(35), F.S., defines a "solid waste management facility" as any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities that meet the requirements of s. 403.7046, F.S., except the portion of such facilities, if any, which is used for the management of solid waste.

Section 403.7045(1), F.S., exempts certain wastes and activities from regulation under the Resource Recovery and Management Act.[14] This includes exemption of recovered materials and recovered materials processing facilities from solid waste regulations if they meet certain criteria.[15]

"Recovered materials" are metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other. The term does not include materials destined for any use that constitutes disposal. Recovered materials are not solid waste.[16] A "recovered materials processing facility" is a facility engaged solely in the storage, processing, resale, or reuse of recovered materials.[17] "Recycling" is any process that collects separates, or processes and reuses or returns solid waste, or materials that would otherwise become solid waste, to use in the form of raw materials or products.[18]

Recovered materials or recovered materials processing facilities do not have to meet the solid waste regulations if:

- A majority of the recovered materials at the facility are demonstrated to be sold, used, or reused within one year;
- The recovered materials handled by the facility or the byproducts of operations that process recovered materials are not discharged or deposited upon any land or water by the owner or operator of such facility so that such recovered materials enter the environment such that a threat of contamination in excess of the applicable DEP standards and criteria is caused;
- The recovered materials handled by the facility are not hazardous wastes;[19] and
- The facility is registered with the DEP.[20]

Solid waste regulations that apply to non-exempt recovered materials and recovered materials processing facilities include requirements:

- That a solid waste management facility obtain a permit to store, process, or dispose of solid waste;
- That a permit be obtained to construct, operate, maintain, modify, or close a solid waste management facility;
- For siting, that prohibit the storage or disposal of solid waste in certain areas;

[14] Chapter 88-130, Laws of Fla.; Ch. 403, F.S.; *See* 99-60 Fla. Op. Att'y Gen. 3 (1999).
[15] Section 403.7045(1)(e), F.S.; *see also* Fla. Admin. Code R. 62-701.220(2)(c).
[16] Section 403.703(24), F.S.
[17] Section 403.703(25), F.S.
[18] Section 403.703(27), F.S.
[19] "Hazardous waste" is solid waste, or a combination of solid wastes, that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. s. 403.703(13), F.S.
[20] Section 403.7045(1)(e), F.S.; Fla. Admin. Code R. 62-701.220(2)(c). Any person in Florida who handles, purchases, receives, recovers, sells or is an end user of 600 tons or more of recovered materials must annually report to DEP, and to all counties from which it received materials, certain information for the preceding calendar year, unless such person is exempt. Section 403.7046, F.S., and Fla. Admin. Code R. 62-722.400(2).

- For burning, that place stringent controls on open burning of solid waste and prohibit controlled burning except in a permitted incinerator or at a facility authorized by a site certification order;
- That a solid waste management facility obtain a specific permit to dispose of hazardous waste;
- That prohibit the disposal of certain items in waste-to-energy facilities;[21]
- For leachate control systems; and
- For closure of a facility and providing financial assurance of closure cost coverage.[22]

Solid waste management facility construction and operation permit fees range from $500 to $10,000. Operation permits are valid for 5 years, but may be obtained for longer periods of time by paying a pro-rated fee amount for the number of years in the permit length beyond the five-year term.[23]

The DEP does not require solid waste combustors to obtain a solid waste permit if the facility operates under a current valid permit for a stationary source of air pollution, open burning, or electrical power plant and transmission line siting.[24] A "solid waste combustor" is an enclosed device that uses controlled combustion whose primary purpose is to thermally break down solid, liquid, or gaseous combustible solid wastes to an ash residue that contains little or no combustible material. A solid waste combustor includes any facility that uses incineration, gasification, or pyrolysis to break down solid waste.[25] "Combustion" is the treatment of solid waste in a device that uses heat as the primary means to change the chemical, physical, or biological character or composition of the waste. Combustion processes include incineration, gasification, and pyrolysis.[26]

III. Effect of Proposed Changes:

Section 2 amends s. 403.7045, F.S., to exempt pyrolysis facilities from solid waste regulations if a majority of the recovered materials at a facility are demonstrated to be sold, used, or reused within one year.[27] This section specifies that the phrase "used or reused" includes, but is not limited to, the conversion by gasification or pyrolysis of post-use polymers into crude oil, fuels, feedstocks, or other raw materials or intermediate or final products.

Section 1 amends s. 403.703, F.S., to add new definitions for terms related to the bill's addition of pyrolysis facilities to those materials and facilities that are eligible for exemption from solid waste regulations, as follows:

- "Gasification" is defined as a process through which post-use polymers are heated and converted to synthesis gas in an oxygen-deficient atmosphere, and then converted to crude oil, fuels, or chemical feedstocks.

[21] Fla. Admin. Code R. 62-701.300 and Fla. Admin. Code R. 62-701.320.
[22] Fla. Admin. Code R. 62-701.710.
[23] Fla. Admin. Code R. 62-701.315.
[24] Fla. Admin. Code R. 62-701.320(14)(a) and (b) and Fla. Admin. Code R. 62-701.710(1)(a).
[25] Fla. Admin. Code R. 62-701.200(108).
[26] Fla. Admin. Code R. 62-701.200(21).
[27] Section 403.7045(1)(e)1., F.S.

- "Post-use polymer" is defined as a plastic polymer that:[28]
  - Is derived from any domestic, commercial, or municipal activity;
  - Not recycled in commercial markets; and
  - May otherwise become waste if not converted to manufacture crude oil, fuels, or other raw materials or intermediate or final products using gasification or pyrolysis.

A post-use polymer may contain incidental contaminants or impurities such as paper labels or metal rings.

- "Pyrolysis" is defined as a process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed, and then cooled, condensed, and converted to:
  - Crude oil, diesel, gasoline, home heating oil, or another fuel;
  - Feedstocks;
  - Diesel and gasoline blendstocks;
  - Chemicals, waxes, or lubricants; or
  - Other raw materials or intermediate or final products.
- "Pyrolysis facility" is defined as a facility that receives, separates, stores, and converts post-use polymers, using gasification or pyrolysis.
- A pyrolysis facility meeting the conditions of s. 403.7045(1)(e) (exemption from solid waste regulations) is not a solid waste management facility under the definition.

This section also modifies existing definitions of terms to add references based on the bill's addition of pyrolysis facilities to those materials and facilities that are eligible for exemption from solid waste regulations, as follows:

- "Recycling" is amended to also include any process by which solid waste, or materials that would otherwise become solid waste, are reused or returned to use in the form of intermediate or final products, and further defines raw materials or intermediate or final products as including, but not limited to:
  - Crude oil;
  - Fuels; and
  - Fuel substitutes; and
- "Solid waste management facility" is amended to exclude pyrolysis facilities that meet the requirements of s. 403.7046, F.S, except the portion of such facilities, if any, which is used for the management of solid waste, from the definition.

Section 3 amends s. 403.7046, F.S., to include a pyrolysis facility with a recovered materials processing facility as a facility where a recovered materials dealer may process recovered materials to satisfy local government registration and reporting requirements for a recovered materials business.

Owners or operators of facilities converting recovered materials by pyrolysis or gasification to fuels, chemicals, and feedstocks that are exempted from solid waste regulations under this bill may still be required to meet other regulatory requirements, such as:

- Registering recovered materials processing facilities with DEP;

[28] A polymer is a chemical compound or mixture of compounds formed by polymerization and consisting essentially of repeating structural units. *See* Merriam-Webster, *Polymer*, https://www.merriam-webster.com/dictionary/polymer, (last visited March 23, 2017).

- Obtaining a stationary source of air pollution permit;
- Obtaining an open burning permit; or
- Obtaining an electrical power plant and transmission line siting permit.

Lastly, sections 4 through 7 amend ss. 171.205(2), 316.003(28), 377.709(2)(f), and 487.048(1), F.S., respectively, to conform cross-references.

Section 8 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable.

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 may have a positive fiscal impact on businesses operating recovered materials processing facilities that convert recovered materials by pyrolysis or gasification to fuels, chemicals, and feedstocks by exempting them from solid waste regulations.

C. Government Sector Impact:

The bill may have a positive fiscal impact on governmental entities operating recovered materials processing facilities that convert recovered materials by pyrolysis or gasification to fuels, chemicals, and feedstocks by exempting them from solid waste regulations.

The DEP will likely need to revise its solid waste rules as a result of the statutory changes in the bill, but such revisions are anticipated to have an insignificant fiscal impact. The DEP has sufficient rulemaking authority to amend its solid waste regulations to conform to changes made in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.703, 403.7045, and 403.7046.

This bill amends the following sections of the Florida Statutes: 171.205, 316.003, 377.709, and 487.048.

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 the Environment and Natural Resources on April 13, 2017:
The CS/CS is a strike-all amendment that provides technical corrections, which do not change the substance of the bill.

CS by Environmental Preservation and Conservation on March 28, 2017:

- Rewords the definitions of "gasification," "post-use polymer," and "pyrolysis facility" for clarification purposes and makes minor technical changes to reflect the rewording of the definitions.
- Changes the definition of "post-use polymer" from a plastic polymer that is recycled in commercial markets to a plastic polymer that is not recycled in commercial markets.
- Removes post-use polymers that are converted to manufacture fuels, chemicals, feedstocks, or other raw materials or intermediate or final products using gasification or pyrolysis from the definition of "recovered materials" and makes minor technical changes to reflect this change in the definition.
- Removes pyrolysis facilities from the definition of "recovered materials processing facility" and makes minor technical changes to reflect this change in the definition.
- Includes a pyrolysis facility with a recovered materials processing facility as facilities where a recovered materials dealer may process recovered materials to satisfy local government registration and reporting requirements for a recovered materials business; and
- Changes the effective date from "on becoming a law" to July 1, 2017.

B. Amendments:

None.

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576-03824-17

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 resource recovery and management; amending s. 403.703, F.S.; defining the terms "gasification," "post-use polymer," "pyrolysis," and "pyrolysis facility" and revising definitions; amending s. 403.7045, F.S.; providing that certain pyrolysis facilities are exempt from certain resource recovery regulations; conforming a cross-reference; amending s. 403.7046, F.S.; requiring certain handlers of post-use polymers to certify to the Department of Environmental Protection; revising rule requirements relating to such certification; authorizing recovered materials dealers to use pyrolysis facilities for recovered materials or post-use polymers processing; amending ss. 171.205, 316.003, 377.709, and 487.048, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (2) and (3) of section 403.703, Florida Statutes, are renumbered as subsections (3) and (2), respectively, present subsections (10) through (22) are renumbered as subsections (11) through (23), respectively, subsection (23) is renumbered as subsection (25), present subsections (24) through (43) are renumbered as subsections (28)

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576-03824-17

through (47), respectively, present subsections (27), (32), and (35) are amended, and new subsections (10), (24), (26), and (27) are added to that section, to read:

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

(10) "Gasification" means a process through which post-use polymers are heated and converted to synthesis gas in an oxygen-deficient atmosphere, and then converted to crude oil, fuels, or chemical feedstocks.

(24) "Post-use polymer" means a plastic polymer that is derived from any domestic, commercial, or municipal activity and which might otherwise become waste if not converted to manufacture crude oil, fuels, or other raw materials or intermediate or final products using gasification or pyrolysis. As used in this part, post-use polymer may contain incidental contaminants or impurities, such as paper labels or metal rings. Post-use polymers intended to be converted as described in this subsection are not solid waste.

(26) "Pyrolysis" means a process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed, and then cooled, condensed, and converted to any of the following:

(a) Crude oil, diesel, gasoline, home heating oil, or another fuel.

(b) Feedstocks.

(c) Diesel and gasoline blendstocks.

(d) Chemicals, waxes, or lubricants.

(e) Other raw materials or intermediate or final products.

(27) "Pyrolysis facility" means a facility that receives, separates, stores, and converts post-use polymers, using


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gasification or pyrolysis. A pyrolysis facility meeting the conditions of s. 403.7045(1)(e) is not a solid waste management facility.

(31) ~~(27)~~ "Recycling" means any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products. Such raw materials or intermediate or final products include, but are not limited to, crude oil, fuels, and fuel substitutes.

(36) ~~(32)~~ "Solid waste" means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in subsection (28) and post-use polymers as defined in subsection (24) are not solid waste.

(39) ~~(35)~~ "Solid waste management facility" means any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities or pyrolysis facilities that meet the requirements of s. 403.7046, except the portion of such facilities, if any, which is used for the management of solid waste.

Section 2. Subsection (1) of section 403.7045, Florida Statutes, is amended to read:


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403.7045 Application of act and integration with other acts.—

(1) The following wastes or activities may ~~shall~~ not be regulated pursuant to this act:

(a) Byproduct material, source material, and special nuclear material, the generation, transportation, disposal, storage, or treatment of which is regulated under chapter 404 or the federal Atomic Energy Act of 1954, ch. 1073, 68 Stat. 923, as amended. ~~;~~

(b) Suspended solids and dissolved materials in domestic sewage effluent or irrigation return flows or other discharges which are point sources subject to permits pursuant to this chapter or s. 402 of the Clean Water Act, Pub. L. No. 95-217. ~~;~~

(c) Emissions to the air from a stationary installation or source regulated under this chapter or the Clean Air Act, Pub. L. No. 95-95. ~~;~~

(d) Drilling fluids, produced waters, and other wastes associated with the exploration for, or development and production of, crude oil or natural gas which are regulated under chapter 377, ~~; or~~

(e) Recovered materials, post-use polymers, ~~or~~ recovered materials processing facilities, or pyrolysis facilities, except as provided in s. 403.7046, if:

1. A majority of the recovered materials or post-use polymers at the facility are demonstrated to be sold, used, or reused within 1 year. As used in this subparagraph, the terms "used" or "reused" include, but are not limited to, the conversion of post-use polymers into crude oil, fuels, feedstocks, or other raw materials or intermediate or final

products by gasification or pyrolysis, as defined in s. 403.703.

2. The recovered materials or post-use polymers handled by the facility or the products or byproducts of operations that process recovered materials or post-use polymers are not discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water by the owner or operator of the ~~such~~ facility so that the ~~such~~ recovered materials or post-use polymers, products or byproducts, or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria is caused.

3. The recovered materials or post-use polymers handled by the facility are not hazardous wastes as defined in ~~under~~ s. 403.703~~,~~ and rules adopted under this section ~~promulgated pursuant thereto~~.

4. The facility is registered as required in s. 403.7046.

(f) Industrial byproducts, if:

1. A majority of the industrial byproducts are demonstrated to be sold, used, or reused within 1 year.

2. The industrial byproducts are not discharged, deposited, injected, dumped, spilled, leaked, or placed upon any land or water so that such industrial byproducts, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria or a significant threat to public health is caused.

3. The industrial byproducts are not hazardous wastes as defined in ~~under~~ s. 403.703 and rules adopted under this section.

Sludge from an industrial waste treatment works that meets the exemption requirements of this paragraph is not solid waste as defined in s. 403.703 ~~s. 403.703(32)~~.

Section 3. Subsection (1) of section 403.7046, Florida Statutes, and paragraph (b) of subsection (3) of that section, are amended to read:

403.7046 Regulation of recovered materials.—

(1) Any person who handles, purchases, receives, recovers, sells, or is an end user of recovered materials or post-use polymers shall annually certify to the department on forms provided by the department. The department may by rule exempt from this requirement generators of recovered materials or post-use polymers; persons who handle or sell recovered materials or post-use polymers as an activity which is incidental to the normal primary business activities of that person; or persons who handle, purchase, receive, recover, sell, or are end users of recovered materials or post-use polymers in small quantities as defined by the department. The department shall adopt rules for the certification of and reporting by such persons and shall establish criteria for revocation of such certification. Such rules shall be designed to elicit, at a minimum, the amount and types of recovered materials or post-use polymers handled by registrants, and the amount and disposal site, or name of person with whom such disposal was arranged, of any solid waste generated by such facility. By February 1 of each year,

registrants shall report all required information to the department and to all counties from which it received materials. Such rules may provide for the department to conduct periodic inspections. The department may charge a fee of up to $50 for each registration, which shall be deposited into the Solid Waste Management Trust Fund for implementation of the program.

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(b)1. Before engaging in business within the jurisdiction of the local government, a recovered materials dealer or pyrolysis facility must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer or pyrolysis facility must register with the local government before engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer or

pyrolysis facility to register its name, including the owner or operator of the dealer or pyrolysis facility, and, if the dealer or pyrolysis facility is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials or post-use polymers will be processed at a recovered materials processing facility or pyrolysis facility satisfying the requirements of this section. The local government may not use the information provided in the registration application to compete unfairly with the recovered materials dealer until 90 days after receipt of the application. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process that must be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which must, at a minimum, include requiring the dealer or pyrolysis facility to identify the types and approximate amount of recovered materials or post-use polymers collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials or post-use polymers reused, stored, or delivered to a recovered materials processing facility or pyrolysis facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials or post-use polymers were disposed of as solid waste. The local government may charge the dealer or pyrolysis facility a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration

program. Registration program costs are limited to those costs associated with the activities described in this subparagraph. Any reporting or registration process established by a local government with regard to recovered materials or post-use polymers is governed by this section and department rules adopted pursuant thereto.

2. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Subsection (2) of section 171.205, Florida Statutes, is amended to read:

171.205 Consent requirements for annexation of land under this part.—Notwithstanding part I, an interlocal service boundary agreement may provide a process for annexation consistent with this section or with part I.

(2) If the area to be annexed includes a privately owned solid waste disposal facility as defined in s. 403.703 ~~s. 403.703(33)~~ which receives municipal solid waste collected within the jurisdiction of multiple local governments, the annexing municipality must set forth in its plan the effects that the annexation of the solid waste disposal facility will have on the other local governments. The plan must also indicate that the owner of the affected solid waste disposal facility has been contacted in writing concerning the annexation, that an

agreement between the annexing municipality and the solid waste disposal facility to govern the operations of the solid waste disposal facility if the annexation occurs has been approved, and that the owner of the solid waste disposal facility does not object to the proposed annexation.

Section 5. Subsection (28) of section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(28) HAZARDOUS MATERIAL.—Any substance or material which has been determined by the secretary of the United States Department of Transportation to be capable of imposing an unreasonable risk to health, safety, and property. This term includes hazardous waste as defined in s. 403.703 ~~s. 403.703(13)~~.

Section 6. Paragraph (f) of subsection (2) of section 377.709, Florida Statutes, is amended to read:

377.709 Funding by electric utilities of local governmental solid waste facilities that generate electricity.—

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

(f) "Solid waste facility" means a facility owned or operated by, or on behalf of, a local government for the purpose of disposing of solid waste, as ~~that term is~~ defined in s. 403.703 ~~s. 403.703(32)~~, by any process that produces heat and incorporates, as a part of the facility, the means of converting heat to electrical energy in amounts greater than actually required for the operation of the facility.

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Section 7. Subsection (1) of section 487.048, Florida Statutes, is amended to read:

487.048 Dealer's license; records.—

(1) Each person holding or offering for sale, selling, or distributing restricted-use pesticides must obtain a dealer's license from the department. Application for the license shall be filed with the department by using a form prescribed by the department or by using the department's website. The license must be obtained before entering into business or transferring ownership of a business. The department may require examination or other proof of competency of individuals to whom licenses are issued or of individuals employed by persons to whom licenses are issued. Demonstration of continued competency may be required for license renewal, as set by rule. The license shall be renewed annually as provided by rule. An annual license fee not exceeding $250 shall be established by rule. However, a user of a restricted-use pesticide may distribute unopened containers of a properly labeled pesticide to another user who is legally entitled to use that restricted-use pesticide without obtaining a pesticide dealer license. The exclusive purpose of distribution of the restricted-use pesticide is to keep it from becoming a hazardous waste as defined in s. 403.703 ~~s. 403.703(13)~~.

Section 8. 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 1104
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources); Environmental Preservation and Conservation Committee; and Senator Perry
SUBJECT:	Resource Recovery and Management
DATE:	April 27, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	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 - Substantial Changes

I. Summary:

CS/CS/SB 1104 adds pyrolysis facilities to those materials and facilities that are exempt from solid waste regulations if a majority of the recovered materials at a facility are demonstrated to be sold, used, or reused within one year. The bill specifies that the phrase "used or reused" includes, but is not limited to, the conversion by gasification or pyrolysis of post-use polymers into crude oil, fuels, feedstocks, or other raw materials or intermediate or final products.

The bill adds new definitions for the following terms related to the bill's addition of pyrolysis facilities to those materials and facilities that are eligible for exemption from solid waste regulations:

- Gasification to fuels, chemicals, and feedstocks;
- Post-use polymers;
- Pyrolysis; and
- Pyrolysis facility.

The bill also amends existing definitions of terms to add references based on the exemption from solid waste regulations for converting post-use polymers by gasification or pyrolysis to fuels, chemicals, and feedstocks.

Finally, the bill provides that a recovered materials dealer may process recovered materials at a pyrolysis facility to satisfy local government registration and reporting requirements for a recovered materials business.

This bill may have a positive fiscal impact on businesses, including governmental entities, operating recovered materials processing facilities that convert recovered materials by pyrolysis or gasification to fuels, chemicals, and feedstocks by exempting them from solid waste regulations.

Under the bill, the Department of Environmental Protection may incur costs relating to rulemaking to conform to the provisions of this legislation. These costs are expected to be insignificant and can be absorbed within current resources.

II. Present Situation:

Gasification

Gasification is a manufacturing process that converts material containing carbon—such as coal, petroleum coke, biomass, or waste—into synthesis gas (syngas) by creating a chemical reaction with the material at high temperatures, without combustion, with a controlled amount of oxygen and/or steam. Gasification may be used to produce electricity, chemicals, fuels, fertilizers, plastics, and other products. The U.S. Department of Energy believes gasification is a method to reduce our nation's dependence on foreign oil and provide a clean, carbon capture–ready source of energy.[1]

Recently, efforts have increased to utilize gasification to convert municipal solid waste (MSW) into energy rather than traditional incineration. Incineration uses MSW as a fuel to create heat and electricity by burning the MSW with high volumes of air to form carbon dioxide and heat. Waste-to-energy plants then use these hot gases to make steam used to generate electricity. During the process, toxins escape in the exhaust steam.[2]

The MSW is not a fuel in the gasification process, but rather is a feedstock[3] for a high temperature chemical conversion process. In the gasifier, MSW reacts with little or no oxygen, breaking down the feedstock into simple molecules and converting them into syngas. Instead of making just heat and electricity as is done with incineration, the syngas produced by gasification can be turned into commercial products such as transportation fuels, chemicals, and fertilizers. Further, the gasification process controls the release of toxins by inhibiting the formation of

[1] Gasification and Syngas Technologies Council, *The Gasification Process*, http://www.gasification-syngas.org/technology/the-gasification-process/ (last visited March 23, 2017); U.S. Department of Energy, *National Energy Technology Laboratory, What is Gasification?* https://www.netl.doe.gov/research/coal/energy-systems/gasification/publications/photo#whatis (last visited March 23, 2017).
[2] Gasification and Syngas Technologies Council, *Gasification v. Incineration*, http://www.gasification-syngas.org/applications/gasification-vs-incineration/ (last visited March 21, 2017).
[3] Feedstock is raw material supplied to a machine or processing plant. Merriam-Webster, *Feedstock*, https://www.merriam-webster.com/dictionary/feedstock (last visited March 23, 2017).

dioxins or furans by limiting oxygen in the chemical reaction. Lastly, the ash from gasification may be used to make cement, roofing shingles, asphalt filler, and material for sandblasting.[4]

Pyrolysis

Pyrolysis is the heating of a material, such as plastics, at high temperatures in the absence of oxygen. Sometimes this process includes the introduction of pressure or water. Without oxygen, the material does not combust, but rather the chemical compounds that make up the material thermally decompose into gases and oil. Pyrolysis oil may be used directly as fuel or further refined into diesel or jet fuel.[5]

Due to the increased demand for plastics and fuels and limited space in solid waste facilities, solid waste managers have increased efforts to employ pyrolysis on non-recycled plastics. Pyrolysis may be used to decrease the need to dispose plastics in landfills and create a renewable source of energy and fuels.[6] The fuel produced from the pyrolysis of plastics does not contain sulphur because the plastic feedstock does not contain sulphur.[7] Because pyrolysis does not incinerate the plastic waste, the emission of harmful compounds is reduced.[8]

Solid Waste Regulation

"Solid waste" is sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.[9]

The Department of Environmental Protection (DEP) implements and enforces the state's solid waste management program.[10] The solid waste management program includes a waste tire management program,[11] administration of solid waste grant programs,[12] and the classification, construction, operation, maintenance, and closure of solid waste management facilities.[13]

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[4] Gasification and Syngas Technologies Council, *Gasification v. Incineration*, http://www.gasification-syngas.org/applications/gasification-vs-incineration/ (last visited March 23, 2017).
[5] Whole System Foundation, *Recycling and Pyrolysis of Plastic*, http://www.whole-systems.org/recycling_and_pyrolysis_of_plastic.html (last visited March 22, 2017).
[6] Feng Gao, *Pyrolysis of Waste Plastics into Fuels*, 6, *available at* https://ir.canterbury.ac.nz/bitstream/handle/10092/4303/Thesis_fulltext.pdf;jsessionid=75F7FC1942BA6D076AE426687A9FD20F?sequence=1 (last visited March 22, 2017).
[7] *Id.* at 7.
[8] Debora Almeida and Maria de Fatima Marques, *Thermal and catalytic pyrolysis of plastic waste*, http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104-14282016000100007 (last visited March 21, 2017).
[9] Section 403.703(32), F.S.
[10] Section 403.705, F.S.
[11] Section 403.717, F.S.; Fla. Admin. Code Ch. 62-701.
[12] Section 403.7095, F.S; Fla. Admin. Code Ch. 62-716.
[13] Section 403.703(35), F.S., defines a "solid waste management facility" as any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities that meet the requirements of s. 403.7046, F.S., except the portion of such facilities, if any, which is used for the management of solid waste.

Section 403.7045(1), F.S., exempts certain wastes and activities from regulation under the Resource Recovery and Management Act.[14] This includes exemption of recovered materials and recovered materials processing facilities from solid waste regulations if they meet certain criteria.[15]

"Recovered materials" are metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other. The term does not include materials destined for any use that constitutes disposal. Recovered materials are not solid waste.[16] A "recovered materials processing facility" is a facility engaged solely in the storage, processing, resale, or reuse of recovered materials.[17] "Recycling" is any process that collects separates, or processes and reuses or returns solid waste, or materials that would otherwise become solid waste, to use in the form of raw materials or products.[18]

Recovered materials or recovered materials processing facilities do not have to meet the solid waste regulations if:

- A majority of the recovered materials at the facility are demonstrated to be sold, used, or reused within one year;
- The recovered materials handled by the facility or the byproducts of operations that process recovered materials are not discharged or deposited upon any land or water by the owner or operator of such facility so that such recovered materials enter the environment such that a threat of contamination in excess of the applicable DEP standards and criteria is caused;
- The recovered materials handled by the facility are not hazardous wastes;[19] and
- The facility is registered with the DEP.[20]

Solid waste regulations that apply to non-exempt recovered materials and recovered materials processing facilities include requirements:

- That a solid waste management facility obtain a permit to store, process, or dispose of solid waste;
- That a permit be obtained to construct, operate, maintain, modify, or close a solid waste management facility;
- For siting, that prohibit the storage or disposal of solid waste in certain areas;

[14] Chapter 88-130, Laws of Fla.; Ch. 403, F.S.; *See* 99-60 Fla. Op. Att'y Gen. 3 (1999).
[15] Section 403.7045(1)(e), F.S.; *see also* Fla. Admin. Code R. 62-701.220(2)(c).
[16] Section 403.703(24), F.S.
[17] Section 403.703(25), F.S.
[18] Section 403.703(27), F.S.
[19] "Hazardous waste" is solid waste, or a combination of solid wastes, that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. s. 403.703(13), F.S.
[20] Section 403.7045(1)(e), F.S.; Fla. Admin. Code R. 62-701.220(2)(c). Any person in Florida who handles, purchases, receives, recovers, sells or is an end user of 600 tons or more of recovered materials must annually report to DEP, and to all counties from which it received materials, certain information for the preceding calendar year, unless such person is exempt. Section 403.7046, F.S., and Fla. Admin. Code R. 62-722.400(2).

- For burning, that place stringent controls on open burning of solid waste and prohibit controlled burning except in a permitted incinerator or at a facility authorized by a site certification order;
- That a solid waste management facility obtain a specific permit to dispose of hazardous waste;
- That prohibit the disposal of certain items in waste-to-energy facilities;[21]
- For leachate control systems; and
- For closure of a facility and providing financial assurance of closure cost coverage.[22]

Solid waste management facility construction and operation permit fees range from $500 to $10,000. Operation permits are valid for 5 years, but may be obtained for longer periods of time by paying a pro-rated fee amount for the number of years in the permit length beyond the five-year term.[23]

The DEP does not require solid waste combustors to obtain a solid waste permit if the facility operates under a current valid permit for a stationary source of air pollution, open burning, or electrical power plant and transmission line siting.[24] A "solid waste combustor" is an enclosed device that uses controlled combustion whose primary purpose is to thermally break down solid, liquid, or gaseous combustible solid wastes to an ash residue that contains little or no combustible material. A solid waste combustor includes any facility that uses incineration, gasification, or pyrolysis to break down solid waste.[25] "Combustion" is the treatment of solid waste in a device that uses heat as the primary means to change the chemical, physical, or biological character or composition of the waste. Combustion processes include incineration, gasification, and pyrolysis.[26]

III. Effect of Proposed Changes:

Section 2 amends s. 403.7045, F.S., to exempt pyrolysis facilities from solid waste regulations if a majority of the recovered materials at a facility are demonstrated to be sold, used, or reused within one year.[27] This section specifies that the phrase "used or reused" includes, but is not limited to, the conversion by gasification or pyrolysis of post-use polymers into crude oil, fuels, feedstocks, or other raw materials or intermediate or final products.

Section 1 amends s. 403.703, F.S., to add new definitions for terms related to the bill's addition of pyrolysis facilities to those materials and facilities that are eligible for exemption from solid waste regulations, as follows:

- "Gasification" is defined as a process through which post-use polymers are heated and converted to synthesis gas in an oxygen-deficient atmosphere, and then converted to crude oil, fuels, or chemical feedstocks.

[21] Fla. Admin. Code R. 62-701.300 and Fla. Admin. Code R. 62-701.320.
[22] Fla. Admin. Code R. 62-701.710.
[23] Fla. Admin. Code R. 62-701.315.
[24] Fla. Admin. Code R. 62-701.320(14)(a) and (b) and Fla. Admin. Code R. 62-701.710(1)(a).
[25] Fla. Admin. Code R. 62-701.200(108).
[26] Fla. Admin. Code R. 62-701.200(21).
[27] Section 403.7045(1)(e)1., F.S.

- "Post-use polymer" is defined as a plastic polymer that:[28]
  - Is derived from any domestic, commercial, or municipal activity;
  - Not recycled in commercial markets; and
  - May otherwise become waste if not converted to manufacture crude oil, fuels, or other raw materials or intermediate or final products using gasification or pyrolysis.

A post-use polymer may contain incidental contaminants or impurities such as paper labels or metal rings.

- "Pyrolysis" is defined as a process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed, and then cooled, condensed, and converted to:
  - Crude oil, diesel, gasoline, home heating oil, or another fuel;
  - Feedstocks;
  - Diesel and gasoline blendstocks;
  - Chemicals, waxes, or lubricants; or
  - Other raw materials or intermediate or final products.
- "Pyrolysis facility" is defined as a facility that receives, separates, stores, and converts post-use polymers, using gasification or pyrolysis.
- A pyrolysis facility meeting the conditions of s. 403.7045(1)(e) (exemption from solid waste regulations) is not a solid waste management facility under the definition.

This section also modifies existing definitions of terms to add references based on the bill's addition of pyrolysis facilities to those materials and facilities that are eligible for exemption from solid waste regulations, as follows:

- "Recycling" is amended to also include any process by which solid waste, or materials that would otherwise become solid waste, are reused or returned to use in the form of intermediate or final products, and further defines raw materials or intermediate or final products as including, but not limited to:
  - Crude oil;
  - Fuels; and
  - Fuel substitutes; and
- "Solid waste management facility" is amended to exclude pyrolysis facilities that meet the requirements of s. 403.7046, F.S, except the portion of such facilities, if any, which is used for the management of solid waste, from the definition.

Section 3 amends s. 403.7046, F.S., to include a pyrolysis facility with a recovered materials processing facility as a facility where a recovered materials dealer may process recovered materials to satisfy local government registration and reporting requirements for a recovered materials business.

Owners or operators of facilities converting recovered materials by pyrolysis or gasification to fuels, chemicals, and feedstocks that are exempted from solid waste regulations under this bill may still be required to meet other regulatory requirements, such as:

- Registering recovered materials processing facilities with DEP;

[28] A polymer is a chemical compound or mixture of compounds formed by polymerization and consisting essentially of repeating structural units. *See* Merriam-Webster, *Polymer*, https://www.merriam-webster.com/dictionary/polymer, (last visited March 23, 2017).

- Obtaining a stationary source of air pollution permit;
- Obtaining an open burning permit; or
- Obtaining an electrical power plant and transmission line siting permit.

Lastly, sections 4 through 7 amend ss. 171.205(2), 316.003(28), 377.709(2)(f), and 487.048(1), F.S., respectively, to conform cross-references.

Section 8 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable.

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 may have a positive fiscal impact on businesses operating recovered materials processing facilities that convert recovered materials by pyrolysis or gasification to fuels, chemicals, and feedstocks by exempting them from solid waste regulations.

C. Government Sector Impact:

The bill may have a positive fiscal impact on governmental entities operating recovered materials processing facilities that convert recovered materials by pyrolysis or gasification to fuels, chemicals, and feedstocks by exempting them from solid waste regulations.

The DEP will likely need to revise its solid waste rules as a result of the statutory changes in the bill, but such revisions are anticipated to have an insignificant fiscal impact. The DEP has sufficient rulemaking authority to amend its solid waste regulations to conform to changes made in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.703, 403.7045, and 403.7046.

This bill amends the following sections of the Florida Statutes: 171.205, 316.003, 377.709, and 487.048.

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 25, 2017:

- Removes a requirement that a post-use polymer must be a plastic polymer that is not recycled in commercial markets (removed from newly enacted definition); and adds to the definition that post-use polymers intended to be converted as described in the definition are not solid waste.
- Adds to the definition of the term "solid waste" that post-use polymers as defined in subsection (24) are not solid waste.
- Adds post-use polymers to the list of wastes that may not be regulated pursuant to the Solid Waste Act if it meets existing statutory criteria applicable to recovered materials.
- Clarifies that DEP and local governments shall regulate post-use polymers according to the same provisions that govern recovered materials.

CS by Environmental Preservation and Conservation on March 28, 2017:

- Rewords the definitions of "gasification," "post-use polymer," and "pyrolysis facility" for clarification purposes and makes minor technical changes to reflect the rewording of the definitions.
- Changes the definition of "post-use polymer" from a plastic polymer that is recycled in commercial markets to a plastic polymer that is not recycled in commercial markets.
- Removes post-use polymers that are converted to manufacture fuels, chemicals, feedstocks, or other raw materials or intermediate or final products using gasification or pyrolysis from the definition of "recovered materials" and makes minor technical changes to reflect this change in the definition.
- Removes pyrolysis facilities from the definition of "recovered materials processing facility" and makes minor technical changes to reflect this change in the definition.

- Includes a pyrolysis facility with a recovered materials processing facility as facilities where a recovered materials dealer may process recovered materials to satisfy local government registration and reporting requirements for a recovered materials business; and
- Changes the effective date from "on becoming a law" to July 1, 2017.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation; and Senator Perry

592-03010-17 20171104c1

A bill to be entitled

An act relating to resource recovery and management; amending s. 403.703, F.S.; revising definitions; defining the terms "gasification," "post-use polymer," "pyrolysis," and "pyrolysis facility"; amending s. 403.7045, F.S.; providing that certain pyrolysis facilities are exempt from certain resource recovery regulations; conforming a cross-reference; amending s. 403.7046, F.S.; authorizing recovered materials dealers to use pyrolysis facilities for recovered materials processing; amending ss. 171.205, 316.003, 377.709, and 487.048, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (2) and (3) of section 403.703, Florida Statutes, are redesignated as subsections (3) and (2), respectively, present subsections (10) through (22) of that section are redesignated as subsections (11) through (23), respectively, present subsection (23) of that section is redesignated as subsection (25), present subsections (24) through (43) of that section are redesignated as subsections (28) through (47), respectively, present subsections (27), (32), and (35) of that section are amended, and new subsections (10), (24), (26), and (27) are added to that section, to read:

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

(10) "Gasification" means a process through which post-use polymers are heated and converted to synthesis gas in an oxygen-

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deficient atmosphere, and then converted to crude oil, fuels, or chemical feedstocks.

(24) "Post-use polymer" means a plastic polymer that is derived from any domestic, commercial, or municipal activity; that is not recycled in commercial markets; and may otherwise become waste if not converted to manufacture crude oil, fuels, or other raw materials or intermediate or final products using gasification or pyrolysis. A post-use polymer may contain incidental contaminants or impurities such as paper labels or metal rings.

(26) "Pyrolysis" means a process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed, and then cooled, condensed, and converted to:

(a) Crude oil, diesel, gasoline, home heating oil, or another fuel;

(b) Feedstocks;

(c) Diesel and gasoline blendstocks;

(d) Chemicals, waxes, or lubricants; or

(e) Other raw materials or intermediate or final products.

(27) "Pyrolysis facility" means a facility that receives, separates, stores, and converts post-use polymers, using gasification or pyrolysis. A pyrolysis facility meeting the conditions of s. 403.7045(1)(e) is not a solid waste management facility.

(31) ~~(27)~~ "Recycling" means any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products.

Such raw materials or intermediate or final products may include, but are not limited to, crude oil, fuels, and fuel substitutes.

(36)~~(32)~~ "Solid waste" means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in subsection (28) ~~(24)~~ are not solid waste.

(39)~~(35)~~ "Solid waste management facility" means any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities or pyrolysis facilities that meet the requirements of s. 403.7046, except the portion of such facilities, if any, which is used for the management of solid waste.

Section 2. Subsection (1) of section 403.7045, Florida Statutes, is amended to read:

403.7045 Application of act and integration with other acts.—

(1) The following wastes or activities may ~~shall~~ not be regulated pursuant to this act:

(a) Byproduct material, source material, and special nuclear material, the generation, transportation, disposal,

storage, or treatment of which is regulated under chapter 404 or the federal Atomic Energy Act of 1954, ch. 1073, 68 Stat. 923, as amended;

(b) Suspended solids and dissolved materials in domestic sewage effluent or irrigation return flows or other discharges which are point sources subject to permits pursuant to this chapter or s. 402 of the Clean Water Act, Pub. L. No. 95-217;

(c) Emissions to the air from a stationary installation or source regulated under this chapter or the Clean Air Act, Pub. L. No. 95-95;

(d) Drilling fluids, produced waters, and other wastes associated with the exploration for, or development and production of, crude oil or natural gas which are regulated under chapter 377; or

(e) Recovered materials, ~~or~~ recovered materials processing facilities, or pyrolysis facilities, except as provided in s. 403.7046, if:

1. A majority of the recovered materials at the facility are demonstrated to be sold, used, or reused within 1 year. As used in this subparagraph, the terms "used" or "reused" include, but are not limited to, the conversion of post-use polymers into crude oil, fuels, feedstocks, or other raw materials or intermediate or final products by gasification or pyrolysis.

2. The recovered materials handled by the facility or the products or byproducts of operations that process recovered materials are not discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water by the owner or operator of the ~~such~~ facility so that the ~~such~~ recovered materials, products or byproducts, or any constituent

thereof may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria is caused.

3. The recovered materials handled by the facility are not hazardous wastes as defined in ~~under~~ s. 403.703~~,~~ and in rules adopted under this section ~~promulgated pursuant thereto~~.

4. The facility is registered as required in s. 403.7046.

(f) Industrial byproducts, if:

1. A majority of the industrial byproducts are demonstrated to be sold, used, or reused within 1 year.

2. The industrial byproducts are not discharged, deposited, injected, dumped, spilled, leaked, or placed upon any land or water so that such industrial byproducts, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria or a significant threat to public health is caused.

3. The industrial byproducts are not hazardous wastes as defined in ~~under~~ s. 403.703 and in rules adopted under this section.

Sludge from an industrial waste treatment works that meets the exemption requirements of this paragraph is not solid waste as defined in s. 403.703 ~~403.703(32)~~.

Section 3. Paragraph (b) of subsection (3) of section 403.7046, Florida Statutes, is amended to read:

403.7046 Regulation of recovered materials.—

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(b)1. Before engaging in business within the jurisdiction of the local government, a recovered materials dealer must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer must register with the local government before engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials will be processed at a recovered materials

processing facility or pyrolysis facility satisfying the requirements of this section. The local government may not use the information provided in the registration application to compete unfairly with the recovered materials dealer until 90 days after receipt of the application. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process that must be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which must, at a minimum, include requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or pyrolysis facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste. The local government may charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this subparagraph. Any reporting or registration process established by a local government with regard to recovered materials is governed by this section and department rules adopted pursuant thereto.

2. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is

subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Subsection (2) of section 171.205, Florida Statutes, is amended to read:

171.205 Consent requirements for annexation of land under this part.—Notwithstanding part I, an interlocal service boundary agreement may provide a process for annexation consistent with this section or with part I.

(2) If the area to be annexed includes a privately owned solid waste disposal facility as defined in s. 403.703 ~~403.703(33)~~ which receives municipal solid waste collected within the jurisdiction of multiple local governments, the annexing municipality must set forth in its plan the effects that the annexation of the solid waste disposal facility will have on the other local governments. The plan must also indicate that the owner of the affected solid waste disposal facility has been contacted in writing concerning the annexation, that an agreement between the annexing municipality and the solid waste disposal facility to govern the operations of the solid waste disposal facility if the annexation occurs has been approved, and that the owner of the solid waste disposal facility does not object to the proposed annexation.

Section 5. Subsection (28) of section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context

otherwise requires:

(28) HAZARDOUS MATERIAL.—Any substance or material which has been determined by the secretary of the United States Department of Transportation to be capable of imposing an unreasonable risk to health, safety, and property. This term includes hazardous waste as defined in s. 403.703 ~~403.703(13)~~.

Section 6. Paragraph (f) of subsection (2) of section 377.709, Florida Statutes, is amended to read:

377.709 Funding by electric utilities of local governmental solid waste facilities that generate electricity.—

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

(f) "Solid waste facility" means a facility owned or operated by, or on behalf of, a local government for the purpose of disposing of solid waste, as ~~that term is~~ defined in s. 403.703 ~~403.703(32)~~, by any process that produces heat and incorporates, as a part of the facility, the means of converting heat to electrical energy in amounts greater than actually required for the operation of the facility.

Section 7. Subsection (1) of section 487.048, Florida Statutes, is amended to read:

487.048 Dealer's license; records.—

(1) Each person holding or offering for sale, selling, or distributing restricted-use pesticides must obtain a dealer's license from the department. Application for the license shall be filed with the department by using a form prescribed by the department or by using the department's website. The license must be obtained before entering into business or transferring ownership of a business. The department may require examination or other proof of competency of individuals to whom licenses are

issued or of individuals employed by persons to whom licenses are issued. Demonstration of continued competency may be required for license renewal, as set by rule. The license shall be renewed annually as provided by rule. An annual license fee not exceeding $250 shall be established by rule. However, a user of a restricted-use pesticide may distribute unopened containers of a properly labeled pesticide to another user who is legally entitled to use that restricted-use pesticide without obtaining a pesticide dealer license. The exclusive purpose of distribution of the restricted-use pesticide is to keep it from becoming a hazardous waste as defined in s. 403.703 ~~403.703(13)~~.

Section 8. 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 15, 2017

I respectfully request that **Senate Bill #1104**, relating to Resource Recovery and Management, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

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

1104
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 1674 UNIV. PKWY #296
Street

SARASOTA FL 34243
City *State* *Zip*

Phone 941-323-2404

Email cullensra@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.

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)

4/25/17
Meeting Date

SB 1104
Bill Number (if applicable)

Topic RESOURCE RECOVERY & MANAGEMENT

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

Address 730 E. PARK AVE
Street

Phone 850 681-1065

TALLAHASSEE FL 32301
City *State* *Zip*

Email KeynaCory@paconsultants.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing NATIONAL WASTE & RECYCLING ASSN - FL CHAPTER

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 1372
INTRODUCER:	Community Affairs Committee; Regulated Industries Committee; and Senator Perry
SUBJECT:	Building-related Contracting
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	**Fav/CS**
2.	Present	Yeatman	CA	**Fav/CS**
3.	Davis	Hansen	AP	**Pre-meeting**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1372 authorizes certified electrical contractors and alarm system contractors (certified contractors) to:

- Act as prime contractors on a project when the majority of the contracted work is within the scope of the certified contractor's license; or
- Subcontract to other licensed contractors any contracted work on a project that is outside the scope of the certified contractor's license.

The bill is similar to Part I of ch. 489, F.S., which authorizes prime contracting and subcontracting by construction contractors.

The bill also changes the process by which revisions are made to the Florida Building Code.

Current law requires the Florida Building Commission (commission) to revise the Florida Building Code every three years to automatically adopt the most recent versions of the International Code Council I-Codes (I-Codes) and the International Energy Conservation Code (IECC) into the foundation of the Florida Building Code. Additionally, under current law, amendments and modifications to the Florida Building Code only remain in effect until the effective date of a new edition of the Florida Building Code.

Under the new process, the commission must use the I-Codes, the National Electric Code (NFPA), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission must adopt an updated Florida Building Code every three years through reviews of the I-Codes, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

However, the commission must adopt any provision from the I-Codes, the National Electrical Code, or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development and maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction. If amendments or modifications are made to the Florida Building Code, those amendments and modifications will be carried forward until the next edition of the Florida Building Code. The Florida Building Code updating process will remain on a three-year cycle.

In addition, the bill provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621, F.S. However, any such technical amendment carried forward into the next edition of the Florida Building Code is subject to review or modification.

The bill also requires the commission to adopt the Florida Building Code by a two-thirds vote of the members present. Furthermore, a technical advisory committee may favorably recommend a proposal to the commission with a two-thirds vote of the members present.

The bill has an insignificant fiscal impact to the Department of Business and Professional Regulation (DBPR), which can be handled with existing resources. *See* Section V. Fiscal Impact Statement.

II. Present Situation:

Construction Contracting

Chapter 489, F.S., dealing with construction contracting, provides for the regulation of contractors based on the type of contracting engaged in by the contractor. Part I of ch. 489, F.S., relating to construction contracting, addresses regulation of the construction industry.[1] Part II of ch. 489, F.S., deals with the licensing of electrical and alarm system contractors.[2]

The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating the construction industry in this state.[3] The CILB is divided into two divisions with separate jurisdictions:

[1] *See* ss. 489.101-489.146, F.S.
[2] *See* ss. 489.501-489.538, F.S. Part III, dealing with registration of septic tank contractors is not relevant to SB 1372; *see* ss. 489.551-489.558, F.S.
[3] *See* s. 489.107, F.S.

- Division I is comprised of the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.[4]
- Division II is comprised of the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.[5]

A specialty contractor is one whose scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.[6]

The CILB is authorized to:
- Reprimand or place licensees on probation;
- Revoke, suspend, or deny the issuance or renewal of a certificate or registration;
- Require financial restitution to a consumer for financial harm directly related to a violation;
- Impose an administrative fine not to exceed $10,000 per violation;
- Require continuing education; or
- Assess costs associated with investigation and prosecution.[7]

Electrical and Alarm System Contracting

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade and have been tested on technical and business matters.[8] The Electrical Contractors' Licensing Board (ECLB) in the DBPR implements part II of ch. 489, F.S.[9]
An alarm system is "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[10] An alarm system includes home-automation equipment, thermostats, and video cameras.[11]

Electrical contractors and alarm system contractors are certified or registered under the ECLB. Certified contractors are those who can practice statewide and are licensed and regulated by the

[4] *See* s. 489.107(4)(a), F.S.
[5] *See* s. 489.107(4)(b), F.S.
[6] *See*, for example, Fla. Admin. Code R. 61G4-15.032 (2016), dealing with the various types of pool/spa contractors.
[7] *See* s. 489.129(1)(a) - (q), F.S., for the acts that may result in the imposition of discipline by the CILB.
[8] *See* s. 489.501, F.S.
[9] *See* ss. 489.507 through 489.517, F.S., concerning the powers and duties of the ECLB.
[10] *See* s. 489.505(1), F.S.
[11] *See* s. 553.793(1)(b), F.S.

ECLB. Registered contractors are those licensed and regulated by a local jurisdiction and who may practice within that locality.[12]

Generally, an "electrical contractor" is a person who has the ability to work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits that generate, transmit, transform, or utilize electrical energy in any form.[13] The scope of an electrical contractor's license includes alarm system work. [14]

Generally, an "alarm system contractor" is a person who is able to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems.[15] An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[16]

In order to become a certified electrical contractor or alarm system contractor, a person at least 18 years of age must submit an application to the DBPR and meet the following criteria:

- Be of good moral character;
- Pass the certification examination, achieving a passing grade as established by the ECLB rule; and
- Meet eligibility requirements according to one of the following criteria:
  - Three years of management experience or education equivalent thereto, not more than half of which may be an educational equivalent, within the last six years;
  - Four years of supervisory experience within the last eight years;
  - Six years of training, education, or supervisory experience within the last 12 years;
  - any combination of qualifications under the three previous options totaling six years within the last 12 years; or
  - Three years as a professional electrical engineer within the last 12 years.[17]

Electrical contractors and alarm system contractors are only permitted to perform contracting within their scope of practice. Contracting includes the attempted sale of contracting services and the negotiation or bid for a contract on these services.[18]

Electrical contractors are specifically permitted to contract for certain work outside the scope of licensure, limited to excavation, paving, related incidental work, and the work of specialty electrical contractors, provided the electrical contractor properly subcontracts all work outside the scope of her or his licensure.[19] There are no similar statutory provisions for alarm system contractors.

[12] *See generally* s. 489.505, F.S.
[13] *See* s. 489.505(12), F.S.
[14] *See* s. 489.537(7), F.S.
[15] *See* s. 489.505(2), F.S.
[16] *See* s. 489.505(1), F.S.
[17] *See* s. 489.511(1)(a) and (b), F.S
[18] *See generally* s. 489.505, F.S.
[19] *See* s. 489.537(2)(a), F.S.

The DBPR may also issue geographically unlimited certificates of competency to an alarm system contractor (certificateholder).[20] The scope of certification is limited to specific alarm circuits and equipment.[21] No mandatory licensure requirement is created by the availability of a certification.[22]

Authority to Act as Prime Contractor or to Subcontract Work

Under s. 489.113(9)(a), F.S., no provision in part I of ch. 489, F.S., prevents any contractor from acting as a prime contractor[23] where the majority of the work to be performed under the contract is within the scope of his or her license or from subcontracting to other licensed contractors work that is part of the project. Currently, the ECLB and DBPR read Florida law regulating the CILB contractors and the ECLB contractors in conjunction with each other.[24] As such, authority granted to "contractors" to act as prime contractor has been interpreted to also apply to electrical contractors and alarm system contractors.[25]

The Florida Building Code and the Florida Building Commission

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code that would ensure minimum standards for the public's health and safety. Four separate model codes were available that local governments could consider and adopt. In that system, the state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[26]

In 1996, a study commission was appointed to review the system of local codes created by the 1974 law and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The 2000 Legislature authorized

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[20] *See* ss. 489.505(4), 489.505(5), and 489.515(1), F.S.

[21] Section 489.505(7), F.S., describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is the abbreviation for "root mean square," a statistical term defined as the square root of mean square. *See* http://www.practicalphysics.org/explaining-rms-voltage-and-current.html (last visited Apr. 11, 2017).

[22] *Id.*

[23] A "prime contractor" is a contractor who has contracted with an owner of a project and has full responsibility for its completion; a prime contractor agrees to perform a complete contract, and may employ (and manage) one or more subcontractors to carry out specific parts of the contract. *See* http://www.businessdictionary.com/definition/prime-contractor.html (last visited Apr. 11, 2017).

[24] "The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." *Fla. Dep't of State v. Martin*, 916 So. 2d 763, 768 (Fla. 2005).

[25] *See* 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for HB 227 (identical to SB 1372), dated Feb. 15, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

[26] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, *available at* http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan. 18, 2017).

implementation of the Florida Building Code, and that first edition replaced all local codes on March 1, 2002. In 2004, for the second edition of the Florida Building Code, the state adopted the International Code Council I-Codes (I-Codes).[27] All subsequent Florida Building Codes have been adopted utilizing the I-Codes as the base code. The most recent Florida Building Code is the fifth edition, which is referred to as the 2014 Florida Building Code. The 2014 Florida Building Code went into effect June 30, 2015.[28]

The commission was statutorily created to implement the Florida Building Code. The commission, which is housed within the DBPR, is a 27-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The commission also approves products for statewide acceptance. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the Florida Building Code.[29]

Most substantive issues before the commission are vetted through a workgroup process. Consensus recommendations are developed and submitted by appointed representative stakeholder groups in an open process with several opportunities for public input.

According to the commission,

> General consensus is a participatory process whereby, on matters of substance, the members strive for agreements which all of the members can accept, support, live with or agree not to oppose. In instances where, after vigorously exploring possible ways to enhance the members' support for the final decision on substantive decisions, and the Commission finds that 100 percent acceptance or support is not achievable, final decisions require at least 75 percent favorable vote of all members present and voting.[30]

Building Code Cycle

Under s. 553.73(7)(a), F.S., the commission must update the Florida Building Code every three years. When updating the Florida Building Code, the commission is required to use the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the International Electrical Code. These I-Codes form the foundation codes of the updated Florida Building Code.

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[27] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." The ICC publishes I-Codes: a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members. All 50 states have adopted the I-Codes.
[28] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Jan. 18, 2017).
[29] Section 553.74, F.S.
[30] Florida Building Commission, Florida Building Commission Consensus-Building Process, *available at* http://www.floridabuilding.org/fbc/commission/FBC_0608/Commission/FBC_Discussion_and_Public_Input_Processes.htm (last visited Jan. 18, 2017).

Any amendments or modifications to the foundation codes found within the Florida Building Code remain in effect only until the effective date of a new edition of the Florida Building Code, every three years.[31] At that point, the amendments or modifications to the foundation codes are removed, unless the amendments or modifications are related to state agency regulations or are related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties, which are carried forward into the next edition of the Florida Building Code.

When a provision of the current Florida Building Code is not part of the foundation codes, an industry member or another interested party must resubmit the provision to the commission during the Florida Building Code adoption process in order to be considered for the next edition of the Florida Building Code.[32]

Amendments between Cycles

Section 553.73(8), F.S., authorizes the commission to approve amendments pursuant to the rule adoptions procedure in ch. 120, F.S., which are needed to address:

- Conflicts within the updated Florida Building Code;
- Conflicts between the updated Florida Building Code and the Florida Fire Prevention Code adopted pursuant to ch. 633, F.S.;
- Unintended results from the integration of the previously adopted Florida-specific amendments;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law; or
- Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

However, the commission may not approve amendments that would weaken the construction requirements relating to wind resistance or the prevention of water intrusion.

The commission may also approve technical amendments to the Florida Building Code once a year for statewide or regional application if the amendment:[33]

- Is needed in order to accommodate the specific needs of Florida.
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public.
- Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.
- Does not degrade the effectiveness of the Florida Building Code.

[31] Section 553.73(7)(g), F.S.
[32] Section 553.73(7)(g), F.S.
[33] Section 553.73(9), F.S.

The 6th Edition of the Florida Building Code

The commission is currently conducting its rule development process for the 6th Edition of the Florida Building Code. Under s. 553.73(7)(e), F.S., a rule updating the Florida Building Code does not take effect until six months after the publication of the updated Florida Building Code. The 6th Edition of the Florida Building Code is tentatively expected to go into effect on December 31, 2017.[34]

The 6th Edition of the Florida Building Code will incorporate the latest version of the I-Codes (2015). The next edition of the I-Codes will be the 2018 I-Codes.

Voting Processes for the Technical Advisory Committees and the Commission

Under s. 553.73(3)(b), F.S., in order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the meeting, and at least half of the regular members must be present in order to conduct the meeting.

The Florida Administrative Code, under 61G20-2.002(7), F.A.C., provides a similar requirement for votes taken by the commission. Specifically, the provision provides that "the decision of the commission to approve a proposed amendment shall be by 75 percent vote. Those proposals failing to meet the vote requirement shall not be adopted."

III. Effect of Proposed Changes:

Section 1 amends s. 489.516, F.S., to provide that no provision in part II, ch. 489, dealing with electrical contracting and alarm system contracting, may prevent certified electrical contractors and alarm system contractors (certified contractors) from:

- Acting as prime contractors on a project when the majority of the contracted work is within the scope of the certified contractor's license; or
- Subcontracting to other licensed contractors any contracted work on a project that is outside the scope of the certified contractor's license.

This provision does not apply to registered electrical and alarm system contractors.

Section 489.113(9)(a), F.S., under part I of ch. 489, F.S., includes a similar provision that applies to all construction contractors, whether certified or registered. The Department of Business and Professional Regulation (DBPR) and the Construction Industry Licensing Board (CILB) have applied s. 489.113(9)(a), F.S., to electrical and alarm system licensees regulated under part II of ch. 489, F.S.[35]

[34] 6th Edition (2017) FBC Code Update Development Tasks, *available at* http://www.floridabuilding.org/fbc/thecode/2017_Code_Development/Timelines/FBC_WorkplanOption1-2015.pdf (Last visited Jan. 18, 2017).

[35] *See* 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for HB 227 (identical to SB 1372), dated Feb. 15, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

Section 2 amends s. 553.73, F.S., to require the Florida Building Commission (commission) to use the International Code Council, the National Electric Code (NFPA), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission must adopt an updated Florida Building Code every three years through reviews of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. At a minimum, the commission must adopt any provision from the International Code Council I-Codes (I-Codes), the National Electric Code, or any other code that is necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development. The commission must also review and adopted updates based substantially on the International Energy Conservation Code; however, the commission must maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction pursuant to s. 553.901, F.S. The commission shall adopt updated codes by rule.

Amendments and modifications, other than local amendments under s. 553.73(4), F.S., to the Florida Building Code, will now remain effective when a new edition of the Florida Building Code is published.

In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. Current law requires a three-fourths vote of the members present at the meeting.

The bill also provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621, F.S. However, any such technical amendment carried forward into the next edition of the Florida Building Code is subject to review or modification.

The bill removes references to Florida-specific amendments because the entire building code will now be Florida-specific. The bill also makes other conforming and clarifying changes in terminology.

Section 3 amends s. 553.76, F.S., to require the commission to adopt the Florida Building Code, and amendments thereto, by a two-thirds vote of the members present.

Section 4 provides for an effective date of 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 bill has an indeterminate fiscal impact. The bill specifically permits certified electrical and alarm system contractors to act as prime contractors and to subcontract work when the majority of the work is in the scope of their license. This codifies the current administrative interpretation by the Department of Business and Professional Regulation (DBPR) and the Construction Industry Licensing Board (CILB) and the Electrical Contractors' Licensing Board (ECLB) of the applicability of s. 489.113(9)(a), F.S., to such certified contractors. This authorization may benefit affected certified electrical and alarm system contractors burdened with higher insurance rates due to the uncertainty created by the administrative interpretation by the DBPR and the CILB and the ECLB.

In addition, the bill will prevent registered electrical and alarm contractors to act as a prime contractor, which had been allowed under the current administrative interpretation by the DBPR, the CILB and the ECLB. According to the DBPR, this change will prevent registered electrical and alarm contractors from bidding on jobs that include some work outside the scope of their licenses.[36] Also, this could lead to more complaints/disciplinary actions against these registered contractors for contracting outside the scope of their license.[37]

Builders and building code officials may benefit from the increased continuity of the Florida Building Code and increased transparency of the updated code adoption process.

C. Government Sector Impact:

The DBPR notes that the portions of the bill relating to certified electrical contractors and certified alarm system contractors have no fiscal impact on state government.[38]

[36] *See* 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for CS/HB 2), dated Mar. 7, 2017 (on file with Senate Appropriations Subcommittee on General Government) at page 5.
[37] *Id.* at page 5.
[38] *Id.* at page 3.

The Florida Building Commission (commission) will have to review each change to the International Code Council I-Codes (I-Codes) and the International Energy Conservation Code (IECC) individually rather than approving wholesale changes to the Florida Building Code. However, the DBPR stated the changes in the bill relating to the revised Florida Building Code adoption process could be accomplished with current resources.[39]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.516, 553.73, and 553.76.

IX. Additional Information:

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

CS/CS by Community Affairs on April 17, 2017:

- Revises the process by which the Florida Building Code will be adopted such that the commission shall use the I-Codes, the National Electric Code, or other nationally adopted model codes and standards for updates to the Code and shall review the most current updates of such codes;
- Requires the commission to adopt any provision from the I-Codes, the National Electrical Code, or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development;
- Provides that a technical advisory committee must receive a two-thirds vote, rather than a three-fourths vote, of the members present at the meeting in order to make a favorable recommendation to the commission;
- Provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources. However, any carried forward technical amendment is subject to review or modification under certain circumstances; and

[39] *See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SPB 7000, dated January 23, 2017 at page 5.

- Requires the commission to adopt the Florida Building Code by a two-thirds vote of the members present.

CS by Regulated Industries on April 4, 2017:

- Authorizes electrical and alarm systems contractors to act as prime contractors and subcontractors, consistent with a similar provision in part I of ch. 489, F.S., authorizing such activities by construction contractors.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 39 and 40
insert:

Section 1. Section 468.603, Florida Statutes, is reordered and amended to read:

468.603 Definitions.—As used in this part:

(2) ~~(1)~~ "Building code administrator" or "building official" means any of those employees of municipal or county governments, or any person contracted, with building construction regulation


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responsibilities who are charged with the responsibility for direct regulatory administration or supervision of plan review, enforcement, or inspection of building construction, erection, repair, addition, remodeling, demolition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance. This term is synonymous with "building official" as used in the ~~administrative chapter of the Standard Building Code and the South~~ Florida Building Code. One person employed or contracted by each municipal or county government as a building code administrator or building official and who is so certified under this part may be authorized to perform any plan review or inspection for which certification is required by this part, including performing any plan review or inspection as a currently designated standard certified building official under an interagency service agreement with a jurisdiction having a population of 50,000 or less.

(4) ~~(2)~~ "Building code inspector" means any of those employees of local governments or state agencies, or any person contracted, with building construction regulation responsibilities who themselves conduct inspections of building construction, erection, repair, addition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance.

(1) ~~(3)~~ "Board" means the Florida Building Code


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Administrators and Inspectors Board.

(7) ~~(4)~~ "Department" means the Department of Business and Professional Regulation.

(6) ~~(5)~~ "Certificate" means a certificate of qualification issued by the department as provided in this part.

(5) ~~(6)~~ "Categories of building code inspectors" include the following:

(a) "Building inspector" means a person who is qualified to inspect and determine that buildings and structures are constructed in accordance with the provisions of the governing building codes and state accessibility laws.

(b) "Coastal construction inspector" means a person who is qualified to inspect and determine that buildings and structures are constructed to resist near-hurricane and hurricane velocity winds in accordance with the provisions of the governing building code.

(c) "Commercial electrical inspector" means a person who is qualified to inspect and determine the electrical safety of commercial buildings and structures by inspecting for compliance with the provisions of the National Electrical Code.

(h) ~~(d)~~ "Residential electrical inspector" means a person who is qualified to inspect and determine the electrical safety of one and two family dwellings and accessory structures by inspecting for compliance with the applicable provisions of the governing electrical code.

(e) "Mechanical inspector" means a person who is qualified to inspect and determine that the mechanical installations and systems for buildings and structures are in compliance with the provisions of the governing mechanical code.


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(g) ~~(f)~~ "Plumbing inspector" means a person who is qualified to inspect and determine that the plumbing installations and systems for buildings and structures are in compliance with the provisions of the governing plumbing code.

(f) ~~(g)~~ "One and two family dwelling inspector" means a person who is qualified to inspect and determine that one and two family dwellings and accessory structures are constructed in accordance with the provisions of the governing building, plumbing, mechanical, accessibility, and electrical codes.

(d) ~~(h)~~ "Electrical inspector" means a person who is qualified to inspect and determine the electrical safety of commercial and residential buildings and accessory structures by inspecting for compliance with the provisions of the National Electrical Code.

(8) ~~(7)~~ "Plans examiner" means a person who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. Categories of plans examiners include:

(a) Building plans examiner.

(b) Plumbing plans examiner.

(c) Mechanical plans examiner.

(d) Electrical plans examiner.


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(3) ~~(8)~~ "Building code enforcement official" or "enforcement official" means a licensed building code administrator, building code inspector, or plans examiner.

Section 2. Paragraph (c) of subsection (2), paragraphs (a) and (d) of subsection (7), and subsection (10) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to chapter 633, has a minimum of 3 years' verifiable full-time


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experience in inspection or plan review, and has satisfactorily completed a building code inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program that provides at least 200 hours but not more than 300 hours of cross-training that is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom


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component of the training program; ~~or~~

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

a. Has at least 5 years' verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 5 years' verifiable full-time experience as a firesafety inspector licensed pursuant to chapter 633; ~~.~~

b. Has satisfactorily completed a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours in the certification category sought, except for one-family and two-family dwelling training programs, which must provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category; or

7.a. Has completed a 4-year internship certification program as a building code inspector or plans examiner while employed full-time by a municipality, county, or other governmental jurisdiction, under the direct supervision of a certified building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year;

b. Has passed an examination administered by the International Code Council in the certification category sought.


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

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

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

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

(7)(a) The board shall provide for the issuance of provisional certificates valid for 1 year, as specified by board rule, to any ~~newly employed or promoted~~ building code inspector or plans examiner who meets the eligibility requirements described in subsection (2) and any newly employed or promoted building code administrator who meets the eligibility requirements described in subsection (3). The provisional license may be renewed by the board for just cause; however, a provisional license is not valid for longer than 3 years.

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


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within such county.

(10)(a) The board may by rule create categories of certification in addition to those defined in s. 468.603(5) and (8) ~~468.603(6) and (7)~~. Such certification categories shall not be mandatory and shall not act to diminish the scope of any certificate created by statute.

(b) The board shall by rule establish:

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

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

3. Partial completion of an internship program may be transferred between jurisdictions on a form prescribed by the board.

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

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

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

Section 3. Subsection (3) of section 468.617, Florida

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Statutes, is amended to read:

468.617 Joint building code inspection department; other arrangements.—

(3) Nothing in this part shall prohibit any county or municipal government, school board, community college board, state university, or state agency from entering into any contract with any person or entity for the provision of building code administrator, building official, or building code inspection services regulated under this part, and notwithstanding any other statutory provision, such county or municipal governments may enter into contracts.

Section 4. Paragraphs (d) and (i) of subsection (1) of section 553.791, Florida Statutes, are amended to read:

553.791 Alternative plans review and inspection.—

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

(d) "Building code inspection services" means those services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~ involving the review of building plans to determine compliance with applicable codes and those inspections required by law of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(i) "Private provider" means a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter 481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term "private provider" also includes a person who holds a standard


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certificate under part XII of chapter 468.

Section 5. Subsection (10) of section 468.609, Florida Statutes, is amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(10) The board may by rule create categories of certification in addition to those defined in s. 468.603(5) and (8) ~~468.603(6) and (7)~~. Such certification categories shall not be mandatory and shall not act to diminish the scope of any certificate created by statute.

Section 6. Section 471.045, Florida Statutes, is amended to read:

471.045 Professional engineers performing building code inspector duties.—Notwithstanding any other provision of law, a person who is currently licensed under this chapter to practice as a professional engineer may provide building code inspection services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~ to a local government or state agency upon its request, without being certified by the Florida Building Code Administrators and Inspectors Board under part XII of chapter 468. When performing these building code inspection services, the professional engineer is subject to the disciplinary guidelines of this chapter and s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of a professional engineer’s performing building code inspection services shall be conducted by the Board of Professional Engineers rather than the Florida Building Code Administrators and Inspectors Board. A professional engineer may not perform plans review as an employee of a local government upon any job that the

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professional engineer or the professional engineer's company designed.

Section 7. Section 481.222, Florida Statutes, is amended to read:

481.222 Architects performing building code inspection services.—Notwithstanding any other provision of law, a person who is currently licensed to practice as an architect under this part may provide building code inspection services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~ to a local government or state agency upon its request, without being certified by the Florida Building Code Administrators and Inspectors Board under part XII of chapter 468. With respect to the performance of such building code inspection services, the architect is subject to the disciplinary guidelines of this part and s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of an architect's performance of building code inspection services shall be conducted by the Board of Architecture and Interior Design rather than the Florida Building Code Administrators and Inspectors Board. An architect may not perform plans review as an employee of a local government upon any job that the architect or the architect's company designed.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to building-related contracting; amending s. 468.603, F.S.; revising definitions;


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amending s. 468.609, F.S.; revising eligibility requirements for the examination for certification as a building code inspector or plans examiner to include an internship certification program; removing an eligibility condition from provisions related to provisional certificates; requiring the Florida Building Code Administrators and Inspectors Board to establish rules; amending s. 468.617, F.S.; authorizing specified entities to contract for the provision of building code administrator and building official services; amending s. 553.791, F.S.; conforming provisions to changes made by the act; revising a definition; amending ss. 468.609, 471.045, and 481.222, F.S.; conforming cross-references;

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Perry) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 273 and 274
insert:

(20) The commission may not:

(a) Adopt the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 90.1, s. 9.4.1.1(g).

(b) Adopt any provision that requires a door located in the opening between a garage and a residence to be equipped with a

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self-closing device.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete lines 53 - 54
and insert:
of that section, subsections (7) and (8) and paragraphs (a) and (b) of subsection (9) of that section are amended, and subsection (20) is added to that section, to read:

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Between lines 32 and 33
insert:
prohibiting the commission from adopting certain provisions into the Florida Building Code;

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

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A bill to be entitled

An act relating to building-related contracting; amending s. 489.516, F.S.; specifying that provisions regulating certified electrical contractors and certified alarm system contractors do not prevent such contractors from acting as a prime contractor or from subcontracting work to other licensed contractors under certain circumstances; amending s. 553.73, F.S.; requiring the Florida Building Commission to use certain entities and codes for updates to the Florida Building Code; revising voting requirements for a technical advisory committee to make a favorable recommendation to the commission; providing that certain technical amendments to the Florida Building Code which are adopted by a local government are not rendered void when the code is updated; specifying that such amendments are subject to review or modification if carried forward into the next edition of the code; requiring the commission to update the Florida Building Code through a review of the most current updates of specified codes; requiring the commission to adopt specified provisions from certain codes; deleting provisions limiting how long an amendment or modification is effective; deleting a provision requiring certain amendments or modifications to be carried forward into the next edition of the code, subject to certain conditions; deleting certain requirements for the resubmission of expired amendments; deleting a provision prohibiting a

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proposed amendment from being included in the code if it has been addressed in the international code; conforming provisions to changes made by the act; amending s. 553.76, F.S.; requiring the commission to adopt the Florida Building Code, and amendments thereto, by a minimum percentage of votes; providing an effective date.

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

Section 1. Present subsection (5) of section 489.516, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section, to read:

489.516 Qualifications to practice; restrictions; prerequisites.—

(5) This part does not prevent any certified electrical or alarm system contractor from acting as a prime contractor where the majority of the work to be performed under the contract is within the scope of his or her license or from subcontracting to other licensed contractors that remaining work that is part of the project contracted.

Section 2. Subsection (3) of section 553.73, Florida Statutes, is amended, paragraph (d) is added to subsection (4) of that section, and subsections (7) and (8) and paragraphs (a) and (b) of subsection (9) of that section are amended, to read:

553.73 Florida Building Code.—

(3) The commission shall use the ~~International Codes published by the~~ International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes

and standards for updates to ~~needed to develop the base code in Florida to form the foundation for~~ the Florida Building Code. The ~~Florida Building~~ commission may approve technical amendments to the code as provided in~~, subject to~~ subsections (8) and (9), ~~after the amendments have been~~ subject to all of the following conditions:

(a) The proposed amendment must have ~~has~~ been published on the commission's website for a minimum of 45 days and all the associated documentation must have ~~has~~ been made available to any interested party before ~~any~~ consideration by a technical advisory committee.~~;~~

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds ~~three-fourths~~ vote of the members present at the ~~technical advisory committee~~ meeting. ~~and~~ At least half of the regular members must be present in order to conduct a meeting.~~;~~

(c) After the technical advisory committee has considered and recommended ~~consideration and a recommendation for~~ approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before ~~any~~ consideration by the commission.~~; and~~

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within ~~sections of~~ the Florida Building Code provisions that ~~which~~ address regional and local concerns and variations. The commission shall make every effort

to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)

(d) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government pursuant to this subsection is not rendered void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code pursuant to this paragraph is subject to review or modification as provided in this part.

(7)(a) The commission~~, by rule adopted pursuant to ss. 120.536(1) and 120.54,~~ shall adopt an updated ~~update the~~ Florida Building Code every 3 years through review of~~. when updating the Florida Building Code, the commission shall select~~ the most current updates ~~version~~ of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by ~~adopted~~ by the International Code Council, and the National Electrical Code, which is copyrighted and published ~~adopted~~ by the National Fire Protection Association. At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development~~, to form the foundation codes of the updated Florida Building Code, if the version has been adopted~~

~~by the applicable model code entity~~. The commission shall also review and adopt updates based substantially on ~~select the most current version of~~ the International Energy Conservation Code (IECC) ~~as a foundation code~~; however, ~~the IECC shall be modified by~~ the commission shall ~~to~~ maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. The commission shall adopt updated codes by rule.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may adopt as a technical amendment to the Florida Building Code ~~modify~~ any portion of the ~~foundation~~ codes identified in paragraph (a), but only as needed to accommodate the specific needs of this state. Standards or criteria adopted from these ~~referenced by the~~ codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments that ~~to the foundation codes which~~ are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are ~~Florida-specific~~ amendments ~~to the foundation codes~~ is readily apparent.

(d) The commission shall further consider the commission's

own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to ~~modify the foundation codes to~~ accommodate the specific needs of the state. A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code ~~foundation codes~~, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.

~~(g) Amendments or modifications to the foundation code pursuant to this subsection shall remain effective only until~~

~~the effective date of a new edition of the Florida Building Code every third year. Amendments or modifications related to state agency regulations which are adopted and integrated into an edition of the Florida Building Code shall be carried forward into the next edition of the code, subject to modification as provided in this part. Amendments or modifications related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties which are adopted to an edition of the Florida Building Code do not expire and shall be carried forward into the next edition of the code, subject to review or modification as provided in this part. If amendments that expire pursuant to this paragraph are resubmitted through the Florida Building commission code adoption process, the amendments must specifically address whether:~~

~~1. The provisions contained in the proposed amendment are addressed in the applicable international code.~~

~~2. The amendment demonstrates by evidence or data that the geographical jurisdiction of Florida exhibits a need to strengthen the foundation code beyond the needs or regional variations addressed by the foundation code, and why the proposed amendment applies to this state.~~

~~3. The proposed amendment was submitted or attempted to be included in the foundation codes to avoid resubmission to the Florida Building Code amendment process.~~

~~If the proposed amendment has been addressed in the international code in a substantially equivalent manner, the Florida Building commission may not include the proposed amendment in the foundation Code.~~

(8) Notwithstanding ~~the provisions of~~ subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code pursuant ~~only~~ to the rule adoption procedures ~~contained~~ in chapter 120. ~~Provisions of~~ The Florida Building Code, including provisions ~~those~~ contained in referenced standards and criteria which relate~~, relating~~ to wind resistance or the prevention of water intrusion, may not be amended pursuant to this subsection to diminish those standards ~~construction requirements~~; however, the commission may~~, subject to conditions in this subsection,~~ amend the Florida Building Code ~~the provisions~~ to enhance such standards ~~those construction requirements~~. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments. The commission may approve amendments that are needed to address:

(a) Conflicts within the updated code;

(b) Conflicts between the updated code and the Florida Fire Prevention Code adopted pursuant to chapter 633;

(c) Unintended results from the integration of previously adopted ~~Florida-specific~~ amendments with the model code;

(d) Equivalency of standards;

(e) Changes to or inconsistencies with federal or state law; or

(f) Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to

stakeholders or otherwise threatens the public health, safety, and welfare.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.

2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.

3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.

4. Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities.

5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the code ~~foundation codes~~ to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the ~~foundation~~ code beyond the needs or regional variations addressed by the ~~foundation~~ code and why the proposed amendment applies to this state.

Section 3. Subsection (2) of section 553.76, Florida Statutes, is amended to read:

553.76 General powers of the commission.—The commission is authorized to:

(2) Issue memoranda of procedure for its internal management and control. The commission may adopt rules related to its consensus-based decisionmaking process, including, but not limited to, super majority voting requirements ~~for commission actions relating to the adoption of the Florida Building Code or amendments to the code~~. However, the commission must adopt the Florida Building Code, and amendments thereto, by at least a two-thirds vote of the members present at a meeting.

Section 4. This 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)

4/25/17
Meeting Date

1372
Bill Number (if applicable)

586648
Amendment Barcode (if applicable)

Topic CONSTRUCTION

Name DAVID RAMBA

Job Title RAMBA LAW GROUP

Address 120 S. MONROE ST. *Street*

Phone 850.727.7087

TALLAHASSEE *City* FL *State* 32301 *Zip*

Email david@rambalaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing BUILDING OFFICIALS ASSOC. 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.

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)

4/25/2017
Meeting Date

1972
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City *State* *Zip*

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

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)

4-25-17
Meeting Date

CS/CS/SB 1372
Bill Number (if applicable)

Topic BUILDING CODES / CONSTRUCTION

Amendment Barcode (if applicable)

Name CAM FENTRISS

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQ # 3-243 Phone

Street

TALL FL 32312 Email

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLA. ROOFING + SHEET METAL CONTRACTORS ASSN
FLA. REFRIGERATION + AC CONTRACTORS ASSN

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 1372
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Electrical Contracting

Name David Shepp

Job Title Lobbyist

Address P.O. Box 3739
Street

Lakeland FL 33802
City *State* *Zip*

Phone 863 581-4250

Email sheppesostrategy.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Independent Electrical 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.

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)

4-25-17
Meeting Date

SB 1372
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Contracting - Codes

Name Kari Hebrank

Job Title

Address 113 East College Ave.
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-566-8214

Email khebrank@wilsonmg.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

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)

Meeting Date

1372
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Name Daphnee Sainvil

Job Title Legislative Coordinator

Address 115 South Andrews Avenue, GC426
Street

Fort Lauderdale FL 33301
City State Zip

Phone 954-357-7577

Email dsainvil@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.

S-001 (10/14/14)

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 176
INTRODUCER:	Senator Passidomo and others
SUBJECT:	Sales and Use Tax Exemption for Feminine Hygiene Products
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	**Favorable**
2.	Fournier	Diez-Arguelles	AFT	**Recommend: Favorable**
3.	Fournier	Hansen	AP	**Favorable**

I. Summary:

SB 176 exempts the sale of feminine hygiene products from state sales and use tax.

The Revenue Estimating Conference has estimated that SB 176 reduces General Revenue receipts by $3.8 million in Fiscal Year 2017-2018 and by $8.9 million on a recurring basis. It reduces local revenue by $1.0 million in Fiscal Year 2017-2018 and by $2.3 million on a recurring basis. The Department of Revenue is expected to incur additional costs of approximately $90,000 to notify sales tax dealers of this new exemption.

The bill provides an effective date of January 1, 2018.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a six percent state sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rental of commercial real estate, and a limited number of services.[1] In addition to the six percent state sales tax, Florida law authorizes counties to levy discretionary sales surtaxes.[2] Sales tax is added to the price of taxable goods or services and the tax is collected from the purchaser at the time of sale.

Chapter 212, F.S., contains statutory provisions that authorize the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 200 different exemptions,

[1] Chapter 212, F.S.
[2] Sections 212.054 and 212.055, F.S.

exclusions, deductions, and credits from sales and use tax.[3] Medical products and supplies are among the items exempt from sales and use tax.[4] Common household remedies used in the cure, mitigation, treatment, or prevention of illness or disease are also exempt from sales and use tax.[5] Cosmetics and toilet articles are not exempt from sales and use tax.[6]

Feminine Hygiene Products and Sales Tax Exemption

Feminine hygiene products are products used to absorb or contain menstrual flow. These products include tampons, sanitary napkins, panty liners, and menstrual cups. Feminine hygiene products are currently subject to state sales and use tax.

However, in 1977, feminine hygiene products were added to the list of medical items exempt from sales and use tax.[7] In 1986, feminine hygiene products were removed from the list of exempt medical items and a study commission was created to review the public policy and fiscal impact of sales tax exemptions.[8] In 1987, the Sales and Tax Exemption Study Commission reviewed the fiscal impact of levying sales tax on feminine hygiene products and estimated such taxation would generate $2.6 million taxes in 1987-1988 and $3.9 million taxes in 1988-1989.[9]

In 2016, a class action lawsuit was filed in Leon County, Florida to challenge the state sales tax levied on the sale of feminine hygiene products.[10] The plaintiffs argue that feminine hygiene products are necessary for women's health and should be exempt as common household remedies.[11] The plaintiffs seek declaratory and injunctive relief, along with a refund of taxes.[12]

Other States

Currently, thirteen states and the District of Columbia do not impose sales and use tax on the sale of feminine hygiene products or have enacted legislation to exempt these products in the future. Five of those states do not impose a state sales tax at all.[13] The District of Columbia,[14] Illinois,[15]

[3] Florida Revenue Estimating Conference, *Florida Tax Handbook*, (2016), *available at* http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2016.pdf (last visited Jan. 12, 2017).
[4] Section 212.08(2)(a), F.S.
[5] *Id.*
[6] The Department of Business and Professional Regulation is responsible for prescribing and approving a list of common household remedies, which is then certified by the Department of Revenue, *available at* http://floridarevenue.com/Forms_library/current/dr46nt.pdf
[7] Ch. 77-193, Laws of Fla.
[8] Ch. 86-166, Laws of Fla.
[9] Sales Tax Exemption Study Commission, *Report and Recommendations of the Sales Tax Exemption Study Commission* (April 1987).
[10] *Wendell v. Florida Dep't. of Rev.*, No. 2016 CA 001526 (Fla. Leon Cty. Ct. July 7, 2016).
[11] *Id.*
[12] *Id.*
[13] Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose state sales tax.
[14] D.C. Official Code §47-2005 (2016)
[15] 35 Ill. Comp. Stat. 110/3-5 (2016).

Maryland,[16] Massachusetts,[17] Pennsylvania,[18] Minnesota,[19] New Jersey,[20] Connecticut,[21] and New York,[22] have passed legislation to exempt the sale of feminine hygiene products from sales and use tax.

III. Effect of Proposed Changes:

The bill creates a sales tax exemption for the sale of feminine hygiene products. The bill also defines "feminine hygiene product" as "a product used to absorb or contain menstrual flow, including, but not limited to, tampons, sanitary napkins, panty liners, and menstrual cups."

The bill provides an effective date of January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenue.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that, except upon approval by each house of the Legislature by two-thirds vote of its 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, these requirements do not apply to laws that have an insignificant fiscal impact on local governments, which for Fiscal Year 2017-2018, is $2 million or less.[23,24,25]

Because this bill reduces local option tax revenue of counties and municipalities by $1.1 million on a recurring bases, it has an insignificant impact on local governments and the provisions of Art. VII, s. 18 of the Florida Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

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[16] Md. Tax-Gen. Code Ann., §11-211 (2016).
[17] Mass. Gen. Laws ch. 64H, § 6 (2016).
[18] 72 Pa. Cons. Stat. § 7204 (2016).
[19] Minn. Stat. §297A.67 (2016).
[20] N.J. Stat. Ann. § 54:32B-8.1 (2016).
[21] Conn. Gen. Stat. § 12-412 (2016).
[22] N.Y. Tax Law §1115 (2016).
[23] FLA. CONST. art. VII, s. 18(d).
[24] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. S*ee* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), *available at* http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Jan. 17, 2017).
[25] 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 Jan. 15, 2017).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has estimated that SB 176 reduces General Revenue receipts by $3.8 million in Fiscal Year 2017-2018 and by $8.9 million on a recurring basis. It reduces local revenue by $1.0 million in Fiscal Year 2017-2018 and by $2.3 million on a recurring basis.[26]

B. Private Sector Impact:

The fiscal impact of the bill is indeterminate, but positive. Individuals will see a reduction in the cost of purchasing feminine hygiene products.

C. Government Sector Impact:

The Department of Revenue estimates the cost associated with notifying businesses of the sales tax exemption, by printing and mailing a Tax Information Publication (TIP), will be approximately $90,000.[27]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 212.08(7)(ooo) 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.

[26] http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0120.pdf
[27] Department of Revenue, *Senate Bill 176 Fiscal Analysis* (Jan. 12, 2017) (on file with the Senate Appropriations Subcommittee on Finance and Tax).

By Senator Passidomo

28-00007-17 2017176__

A bill to be entitled

An act relating to a sales and use tax exemption for feminine hygiene products; amending s. 212.08, F.S.; exempting the sale of feminine hygiene products from the sales and use tax; defining the term "feminine hygiene product"; providing an effective date.

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

Section 1. Paragraph (ooo) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict

28-00007-17 2017176__

compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(ooo) *Feminine hygiene products.*—The sale of a feminine hygiene product is exempt from the tax imposed by this chapter. As used in this paragraph, the term "feminine hygiene product" means a product used to absorb or contain menstrual flow, including, but not limited to, tampons, sanitary napkins, panty liners, and menstrual cups.

Section 2. This act shall take effect January 1, 2018.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KATHLEEN PASSIDOMO
28th District

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

February 22, 2017

The Honorable Jack Latvala, Chair
Senate Committee on Appropriations
Florida Senate
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Latvala:

Senate Bill 176, Sales and Use Tax Exemption for Feminine Hygiene Products, 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,

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 / 26/2017
Meeting Date

Topic _____ Bill Number 1764
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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.

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

S-001 (10/20/11)

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 1144
INTRODUCER:	Health Policy Committee and Senator Montford
SUBJECT:	Laboratory Screening
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Loe	Williams	AHS	**Recommend: Favorable**
3.	Loe	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1144 amends the powers and duties of the Department of Health (DOH) pertaining to:

- Human Immunodeficiency Virus (HIV) - The bill requires providers in only nonhealth care settings to inform persons to be tested that a positive test result will be reported to the county health department (CHD) and the CHD will provide that person with locations for anonymous testing.
- Laboratory Screening for Other States - The bill authorizes the DOH to perform public health laboratory testing for other states on a fee-for-service basis.
- Lead Poison Screening - The bill revises the Lead Poisoning Prevention Screening and Educational Act to conform to federal guidelines and modifies the scope of responsibilities required of the DOH.
- Newborn Screening - The bill revises the composition of the Genetics and Newborn Screening Advisory Council (GNSAC), adds eligible individuals who may receive test results from the Newborn Screening Program (NSP), and expands the responsibility of the NSP to screen for genetic disorders even when treatment is not currently available.

The bill has no impact on state revenues or expenditures.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Human Immunodeficiency Virus (HIV)

HIV is an immune system virus that can lead to acquired immunodeficiency syndrome, or AIDS. HIV affects specific cells in the immune system and, over time, the virus can destroy so many of those cells that the body cannot fight off infections and disease.[1] There is no cure for HIV but it can be controlled with proper medical care, including antiretroviral therapy (ART). If taken properly, ART can dramatically prolong the lives of people infected with HIV, keep them healthy, and greatly lower the chance of infecting others.[2] A person diagnosed with HIV and treated, before the disease advances, can live nearly as long as someone who does not have HIV. If left untreated, HIV is almost always fatal.[3]

In the U.S., HIV is spread mainly through unprotected sex with someone who has HIV or by sharing needles, syringes, or other equipment used to inject drugs with someone who has HIV. HIV can also be spread from mother to baby during pregnancy, birth or breastfeeding.[4] The Centers for Disease Control and Prevention (CDC) estimated that in 2013, the most recent year for which the information is available, more than 1.2 million persons in the U.S. were living with HIV, including 13 percent (one in eight) who were unaware they were infected. However, the annual number of new HIV cases declined by 19 percent from 2005 to 2014. In 2015, approximately 39,513 persons were diagnosed with HIV; and gay and bisexual African American men were the population group most affected.[5]

HIV Testing

An HIV test is a medical test ordered to determine the presence or absence of antibodies or antigens to the human immunodeficiency virus, or the presence or absence of human immunodeficiency virus itself.[6] The CDC supports HIV testing that occurs during an individual's routine health care visit.[7] This is especially important for people who may not consider themselves at risk for HIV.[8]

The most common test for HIV is an HIV antibody test, where blood or saliva are checked for specific HIV fighting proteins known as HIV antibodies.[9] This test is considered "preliminary"

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[1] Centers for Disease Control and Prevention, *About HIV/AIDS* (updated November 30, 2016), *available at* http://www.cdc.gov/hiv/basics/whatishiv.html, (last visited March 20, 2017).
[2] *Id.*
[3] *Id.*
[4] Centers for Disease Control and Prevention, *HIV Transmission*, (updated December 21, 2016), *available at* http://www.cdc.gov/hiv/basics/transmission.html, (last visited March 20, 2017).
[5] Centers for Disease Control and Prevention, *HIV in the United States: At A Glance* (updated December 2, 2016), *available at* http://www.cdc.gov/hiv/statistics/basics/ataglance.html, (last visited March 20, 2017).
[6] Section 381.004(1)(b), F.S.
[7] Centers for Disease Control and Prevention, *State HIV Testing Laws: Consent and Counseling Requirements* (updated March 18, 2015), *available at* http://www.cdc.gov/hiv/policies/law/states/testing.html, (last visited March 20, 2017).
[8] In Florida, only 42.2 percent of adults reported having ever been tested for HIV; Florida Department of Health, *Florida Charts*, *available at* http://www.flhealthcharts.com/charts/Brfss/StateDataViewer.aspx?bid=119 (last visited March 20, 2017).
[9] The U.S. Department of Health and Human Services, *Types of HIV Tests*, (updated Mar. 7, 2017) *available at* http://aids.gov/hiv-aids-basics/prevention/hiv-testing/hiv-test-types/index.html, (last visited March 20, 2017).

because it can take between three to 12 weeks for the body to produce sufficient HIV antibodies for the test to detect the presence of the antibodies.[10] If the test result is positive, follow-up diagnostic testing is required to confirm the presence of the HIV.

Follow-up HIV testing detects both antibodies and antigens. The antibody-antigen test can find a recent HIV infection earlier than tests that detect only antibodies, but antibody-antigen tests are only available for blood, not other body fluids.[11]

HIV in Florida

The DOH estimates that approximately 127,589 persons living in Florida are infected with HIV.[12] In 2016, Florida ranked first in the nation in the number of new HIV cases, with over 5,300 new cases; however, this was down from 2014, when there were more than 6,000 newly reported HIV infections in Florida.[13]

HIV Testing in Florida

Section 381.004, F.S., governs HIV testing in Florida. It creates a statewide network of confidential and anonymous HIV testing and counseling sites, and establishes procedures for HIV testing, informed consent, and reporting requirements. The DOH CHDs are the primary source for state-sponsored HIV programs and provide testing, counseling, prevention outreach, and education to the public. The CHDs, and any other person conducting an AIDS or HIV testing program, must register with the DOH and meet necessary requirements.[14] The statute was enacted to create an environment in which people would agree to seek out HIV testing because they would be sufficiently informed about the infection and assured about the privacy of a decision to be tested.[15]

Notification and Informed Consent

Section 381.004(2), F.S., differentiates between a "health care setting" and a "nonhealth care setting" when delineating the procedures required to obtain a person's consent to perform an HIV test.

In the health care setting, the person to be tested must be notified, either orally or in writing, that the test is planned and that he or she has a right to refuse. If the person consents and has a current, signed general medical consent form, no separate consent form is required for the HIV test. If the person refuses the HIV test, it must be documented in their medical records.[16] A

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[10] Id.
[11] Centers for Disease Control and Prevention, *Testing* (updated December 6, 2016), *available at* http://www.cdc.gov/hiv/basics/testing.html, (last visited March 20, 2017).
[12] Department of Health, *HIV Data Center, available at* http://www.floridahealth.gov/%5C/diseases-and-conditions/aids/surveillance/index.html, (last visited March 20, 2017).
[13] Department of Health, *HIV Disease: United States vs. Florida, available at* http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/_documents/fact-sheet/2014/2014-us-vs-fl-fact-sheet.pdf, (last visited March 20, 2017).
[14] Section 381.004(1), F.S.
[15] Florida Department of Health, "*Florida's Omnibus AIDS Act: A Brief Legal Guide for Health Care Professionals,"* Jack P. Hartog, Esq., (August 2013), *available at* http://www.floridahealth.gov/diseases-and-conditions/aids/administration/_documents/Omnibus-booklet-update-2013.pdf, (last visited March 20, 2017).
[16] Section 381.004(2), F.S.

"health care setting" is defined as a setting devoted to the diagnosis and care of persons or the provision of medical services to persons.

In a "nonhealth care setting," a provider is required to obtain a subject's informed consent before performing an HIV test. Informed consent must be preceded by an explanation of the subject's right to confidential treatment of the test results and the information identifying him or her as the test subject.[17] A "nonhealth care setting" is defined as a site that conducts HIV testing for the sole purpose of identifying HIV infection, but does not provide medical treatment.

In either the healthcare or nonhealth care setting, every person tested for HIV must first give his or her informed consent, except as specified in s. 381.004(2)(h), F.S. Informed consent for HIV testing requires:

- An explanation that the identity of the person to be tested, and the results of the test, are confidential and protected from disclosure to the extent permitted by law;
- Notice that persons with a positive HIV test will be reported to the local CHD; and
- Notice that anonymous testing is available and the locations of the anonymous testing sites.[18]

Informed consent must be in writing when it is:

- From the potential donor, or donor's legal representative, prior to donating blood, blood components, organs, skin, semen, or other human tissue or body part;
- For insurance purposes; and
- For contract purposes in a health maintenance organization.[19]

Currently, test results contained in medical records of hospitals licensed under ch. 395, F.S., can be released under s. 395.3025, F.S., if the hospital has obtained written informed consent for the HIV test. Informed consent is not required in numerous situations, including when a significant exposure has occurred.[20]

The DOH Laboratory Testing for Other States

Section 381.0202, F.S., directs the DOH to establish and maintain laboratories in the state for microbiological and chemical analysis and any other purpose it determines necessary for the protection of public health, safety, and welfare. The DOH operates the Bureau of Public Health Laboratories that provides diagnostic screening, monitoring, reference, research, and emergency public health laboratory services to CHDs and other official agencies, physicians, hospitals, and private laboratories.[21]

Due to costs and resource limitations, it is not feasible for all 50 states to maintain public health testing infrastructure.[22] Furthermore, reagents to test for rare or emerging pathogens are often

[17] *Supra* note 17.
[18] *Id*.
[19] *Id*.
[20] *See* s. 381.004(2)(e)14., F.S.
[21] Department of Health, B*ureau of Public Health Laboratories, available at* http://www.floridahealth.gov/programs-and-services/public-health-laboratories/index.html, (last visited Mar. 21, 2017).
[22] Department of Health, *House Bill 1041 Analysis (identical to SB 1144*), (March 1, 2017) (on file with the Senate Committee on Health Policy).

only available in limited quantities from the CDC.[23] In response, the CDC advocates for the establishment of regional testing centers to perform specialized testing for multiple states.[24]

Current statutory language does not give the DOH authority to perform public health laboratory testing for samples from other states.

Lead Poison Screening and Education

"Lead poisoning" or "lead toxicity" are both defined as high levels of lead, which is a heavy metal, typically associated with severe health effects. The amount of lead in the body and tissues, as well as the length of time of the exposure, determines the toxicity level and the signs and symptoms exhibited by a person.[25] The CDC has termed excessive absorption to lead as one of the most common pediatric health problems in the U.S. today, and it is entirely preventable.[26] Enough is known about lead poisoning to prevent lead exposure and permanently eradicate this condition. This makes the persistence of lead poisoning in the U.S. a singular and direct challenge to public health authorities, clinicians, regulatory agencies, and society.[27] While the U.S. has not eradicated lead poisoning completely, it has made tremendous progress in reducing lead exposure. [28]

Adult Lead Poisoning

Lead poisoning in adults is a medical condition caused by increased BLLs in the body that can be from, among other things, food, water, soil, home building materials including lead paint, exhaust fumes, and industrial and recycling waste. Lead interferes with a variety of biologic processes and is toxic to many organs and tissues, including the heart, bones, intestines, kidneys, and reproductive and nervous systems. The CDC states that a BLL of five micrograms per deciliter (5 µg/dL) or above for an adult is cause for concern; however, lead may impair development and have harmful health effects at even lower levels. There is no known safe level of lead exposure.[29] In 2015, the National Institute for Occupational Safety and Health also designated five micrograms per deciliter (5 µg/dL) or above from whole blood, in a venipuncture blood sample, as an elevated BLL for adults.

Childhood Lead Poisoning

In the U.S. today, there are approximately 3.6 million families with a child under six years of age who live in homes with one or more conditions that can expose a child to lead levels that the U.S. Environmental Protection Agency (EPA) considers hazardous. The CDC recognizes a reference level of five micrograms of lead per deciliter (5 µg/dL) of blood to identify children

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[23] *Id.*
[24] *Id.*
[25] Department of Health, *Adult Lead Poisoning, available at* http://www.floridahealth.gov/environmental-health/lead-poisoning/adults.html#heading_2, (last visited March 21, 2017).
[26] Centers for Disease Control and Prevention, *Preventing Lead Poisoning in Young Children, Chapter 1,* (last updated October 1991) *available at* https://www.cdc.gov/nceh/lead/publications/books/plpyc/Chapter1.htm, (last visited March 21, 2017).
[27] *Id.*
[28] *See Supra* note 28.
[29] *Id.*

whose BLLs are high enough for the CDC to recommend public health actions be initiated. Approximately 500,000 children each year ages one to five years of age exceed the reference level, which is based on an extrapolation of the U.S. population of children ages one to five who are tested for BLLs. The median concentration of BLLs for U.S. children one to five years of age has declined from 15 µg/dL in 1976-1980 to 0.7 µg/dL in 2013-2014 - a decrease of 95 percent;[30] however, there is no safe BLL for children that has been identified.[31] The largest decline occurred between 1970 and 1990 following the elimination of lead in motor vehicle gasoline, the ban on lead paint for residential use, the removal of lead from food cans, bans on the use of lead pipes and plumbing fixtures, and other limitations on lead uses.[32]

Signs and Symptoms of Lead Poisoning

Lead poisoning is classified acute or chronic depending upon the length of time the individual has been exposed to the source of the lead.[33] Signs and symptoms of acute lead poisoning include abdominal pain, nausea, diarrhea, and poor appetite.

Chronic lead poisoning usually presents itself with symptoms affecting multiple body systems. It is associated with three main types of symptoms: gastrointestinal, neuromuscular, and neurological. Central nervous system and neuromuscular symptoms usually result from intense exposure while gastrointestinal symptoms usually result from exposure over longer periods of time.

Lead Toxicity Testing

In 2012, the CDC adopted the BLL as its preferred method of testing children and adults for elevated levels of lead in the body, and five micrograms per deciliter (5 µg/dL) as the level where environmental or educational public health intervention is required.[34] While testing is available to detect lead in any body tissue, the primary tests used in the last 30 years to evaluate lead exposure that are readily available to practitioners to determine lead exposure levels in the human body are:

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[30] Supra note 33, at p. 6, citing Centers for Disease Control and Prevention, National Center for Health Statistics, *National Health and Nutrition Examination Survey* (updated January 25, 2017) *available at* https://www.cdc.gov/nchs/nhanes.htm, (last visited March 21, 2017); *See also* U.S. Environmental Protection Agency, *America's Children and the Environment (ACE) available at* https://www.epa.gov/ace, (last visited March 21, 2017).

[31] President's Task Force on Environmental Health Risks and Safety Risks to Children, *Key Federal Program to Reduce Childhood Lead Exposures and Eliminate Associated Health Impacts* (November 2016) *available at* https://ptfceh.niehs.nih.gov/features/assets/files/key_federal_programs_to_reduce_childhood_lead_exposures_and_eliminate_associated_health_impactspresidents_508.pdf, (last visited March 21, 2017).

[32] *Id.* at p. 5.

[33] *Supra* note 28.

[34] U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Environmental and Health Medicine Education, *Lead Toxicity: What Tests Can Assist with Diagnosis and Treatment of Lead Toxicity? available at:* https://www.atsdr.cdc.gov/csem/csem.asp?csem=7&po=12, (last visited March 21, 2017).

- Venipuncture[35] - BLL, Complete Blood Count, or EP and ZPP[36] blood levels;[37]
- Capillary stick[38,39] - for BLLs;
- Radiographs - Abdominal radiographs to detect the presence of radio-dense lead foreign bodies in the gastrointestinal tract, or long bone radiographs to detect the presence of lead lines;[40]and
- Hair and fingernail scrapings.[41]

Lead Poisoning Prevention Screening and Education Act

In 2006, the Florida Legislature created the Lead Poisoning Prevention Screening and Education Act (Act). The Act requires the DOH to establish a program for the early identification of persons at risk for having elevated BLLs. Section 381.985(1), F.S., requires the program to systematically screen children under the age of six in certain targeted populations for the presence of elevated BLLs. The DOH is required to consult with professional medical groups and other sources, and adopt rules that establish procedural guidelines for the screening of children under six, the appropriate intervals for re-screening, and the follow-up for children found to have elevated BLLs.[42] The Act defines "elevated blood-lead level" as a quantity of lead in whole venous blood that exceeds ten micrograms per deciliter (10 µg/dL) or such other level as provided in the Act.[43]

The Act requires the DOH to establish a statewide, multifaceted, ongoing educational program designed to meet the needs of tenants, property owners, health care providers, early childhood educators, care providers, and realtors concerning lead poisoning prevention.[44] This educational program requires the DOH to:

- Sponsor public service announcements on radio, television, print media, and the internet about the nature of lead-based paint hazards, the importance of standards for lead poisoning prevention, and the purposes and responsibilities of the Act; and

[35] Medicare defines venipuncture, for purposes of reimbursement using CPT code 36415, as the process of puncturing a vein and withdrawing a blood sample for purposes of analysis for testing. The most common method and site of venipuncture is the insertion of a needle into the cubital vein of the anterior forearm at the elbow fold. It is fee scheduled at $3.10, the same a capillary stick. *See* Medicare Fee, Payment, Procedure code, ICD, Denial, C*PT code venipuncture - 36415 and 36416 - Billing Tips - Not separately paid*, *available at*: http://www.medicarepaymentandreimbursement.com/2010/06/cpt-venipuncture-36415-not-seperately.html, (last visited March 22, 2017).
[36] *Id.* Erythrocyte protoporphyrin (EP), commonly assayed as zinc protoporphyrin (ZPP), was previously considered the best test for screening for asymptomatic children; however, is not sufficiently sensitive at lower BLLs and therefore is not as useful a screening test for lead exposure as previously thought.
[37] *Id.* For individuals with high or chronic past exposure; however, BLLs often under-represent the total body burden because most lead is stored in the bone and may have "normal" levels in the blood.
[38] *Id.* The CDC recommends, that given the greater risk of contamination using the capillary stick method, an elevated BLL obtained through a capillary stick should always be confirmed through venipuncture.
[39] *Supra* note 43. Medicare defines a capillary stick, for purposes of reimbursement using CPT code 36416, as the collection of a blood specimen from the stick of the finger, heel, or ear. It is fee scheduled at $3.10, the same as venipuncture.
[40] *Id.* These are lines of increased density on the metaphysis growth plate of the bone, showing radiological growth retardation. This is not a routine procedure to identify lead poisoning, but a radiological finding of chronic exposure.
[41] *Id.* to detect their lead content is an uncertain estimate of body burden and is not recommended.
[42] Section 381.985(1), F.S.
[43] Section 381.983(3), F.S.
[44] Section 381.984(1), F.S.

- Develop culturally and linguistically appropriate information pamphlets regarding lead poisoning, testing, prevention, treatment, and the purposes of the Act.[45]

The DOH previously had federal funding to conduct a lead poisoning prevention program, including funding for a large media campaign; however, the federal funding for this program ended in 2012. [46]

The Act also requires the DOH to maintain records of all screenings conducted, indexed geographically and by owner, to determine the location of areas with relatively high incidence of lead poisoning and elevated BLLs. All confirmed and probable cases of lead poisoning found in the course of screening must be reported to the affected individual, his or her parent or legal guardian if he or she is a minor, and the State Surgeon General.[47]

Florida Newborn Screening Program

The Newborn Screening Program (NSP) screens all newborns for hearing impairment and to identify, diagnose, and manage newborns at risk for selected disorders that, without detection and treatment, can lead to permanent developmental and physical damage or death.[48]

The Florida Genetics and Newborn Screening Advisory Council (GNSAC) advises the DOH on which disorders should be added to the panel of screening for disorders, and the procedures for collecting and transmitting specimens.[49] The GNASC is made up of 15 members, including consumer members, various state agency representatives and health care providers, and one representative from each of the four medical schools in the state.[50] When the GNSAC was created, the state only had four medical schools. Currently there are ten medical schools in Florida.

The NSP currently screens for 31 core conditions and 22 secondary conditions,[51] and 50 of these conditions are included in the 58 disorders listed in the federal Recommended Uniform

[45] Sections 381.984(2) and (3), F.S.
[46] *Supra* note 25.
[47] Section 381.985(3), F.S.
[48] Department of Health, *Florida Newborn Screening Guidelines* (2012), *available at* https://www.peds.ufl.edu/divisions/genetics/programs/newborn_screening/2012%20newborn%20screening%20quidelines%20FL.pdf, (last visited March 21, 2017).
[49] Section 383.14(5), F.S.
[50] *Id.*
[51] Department of Health, *Disorder List* (December 17, 2013), *available at* http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/_documents/newborn-screening-disorders.pdf, (last visited March 21, 2017); this list is also maintained by the DOH as a Rule. *See* also Rule 64C-7.002, F.A.C.

Screening Panel (RUSP).[52] Currently, every disorder screened[53] on the NSP panel has known treatment options.

The NSP involves coordination among several entities, including the Bureau of Public Health Laboratories Newborn Screening Laboratory in Jacksonville (state laboratory), Children's Medical Services (CMS) Newborn Screening Follow-up Program, and referral centers, birthing centers, and physicians throughout the state.[54]

Currently, the state laboratory is only authorized to release the results of a newborn's metabolic tests or screenings to the newborn's health care practitioner.[55] Federal regulations require public health laboratories to release screening results, upon request, to the patient, the patient's parent or legal guardian, the patient's personal representative, or person designated by the patient or legal guardian.[56]

III. Effect of Proposed Changes:

Human Immunodeficiency Virus (HIV)

Section 1 amends s. 381.004(2)(a), F.S., to remove the requirement on a provider in health care settings to inform a person seeking an HIV test that a positive test result will be reported to the CHD and the CHD will provide information on the availability and locations for anonymous testing. This section requires only providers in nonhealth care settings to inform persons seeking HIV testing of those facts.

Providers in health care settings will still be required to report positive HIV test results to the DOH. This section does not remove the reporting requirement, only the requirement for providers to provide the person seeking the HIV test the information that a positive result will be reported to the CHD and the CHD will provide information on the availability and locations for anonymous testing.

The DOH Laboratory Testing for Other States

Section 2 amends s. 381.0202, F.S., to authorize the DOH to perform laboratory testing related to public health for other states on a fee-for-service basis.

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[52] The federal Advisory Committee on Heritable Disorders in Newborns and Children (committee) advises the Secretary of the U.S. Department of Health and Human Services on the most appropriate application of universal newborn screening tests, technologies, policies, guidelines, and standards. The committee established the Recommended Uniform Screening Panel (RUSP), and periodically updates it. *See* U.S. Department of Health and Human Services, *Advisory Committee on Heritable Disorders in Newborns and Children, available at* https://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/, (last visited March 23, 2017).

[53] X-Linked Adrenoleukodystrophy (X-ALD) was recommended by the GNSAC on February 19, 2016, for inclusion to the NSP panel; however, screening for the disorder is not expected to begin until at least early 2018 when a test kit approved by the federal Food and Drug Administration is anticipated to be available.

[54] Department of Health, *Newborn Screening, available at* http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/ (last visited March 21, 2017).

[55] Section 383.14(1)(c), F.S.

[56] 42 C.F.R. s. 493.1291(l) (2016).

Lead Poison Screening and Education

Section 3 s. 381.983(3), F.S., to revise the definition of an "elevated blood-lead level." This section removes the requirement that, in determining a person's BLL, the blood sample tested must be only whole venous blood. This section broadens the permissible test samples for BLLs to include blood from a capillary draw, but does not define the term "draw". The use of a capillary sample to test for an elevated BLL might increase the cost of testing as, according to the CDC, all elevated BLLs from a capillary stick should be confirmed by secondary testing with a whole blood sample.[57]

Section 3 eliminates the specific, numerical level of 10 µg/dL as the quantity of lead in the blood that constitutes an "elevated blood-lead level." This section requires the DOH to specify by rule the test result level defining an elevated BLL based on national recommendations developed by the Council of State and Territorial Epidemiologists and the CDC. This change allows for the adjustment of reporting and screening requirements as the science relating to BLLs changes.

Section 4 amends s. 381.984(2)-(3), F.S., to revise the required media options for the DOH to use as it sponsors public service announcements regarding lead based paint hazards, lead poisoning prevention and the purposes and responsibilities set out in the Lead Poisoning Prevention Screening and Education Act.[58] This creates flexibility and may result in a cost savings for the distribution of educational materials regarding lead poisoning.

Section 5 amends s. 381.985, F.S., to require the DOH to establish guidelines for the early identification of persons at risk of having elevated BLLs and for the systematic screening of children under age six in targeted populations. This replaces the responsibility for the DOH to establish a program for the early identification of persons at risk for having elevated BLLs, which shall systematically screen children under the age of six in certain targeted populations for the presence of elevated BLLs.

Section 5 reduces the DOH reporting and record keeping requirements regarding BLLs. This section requires the DOH to only maintain records of screenings with an elevated BLL rather than all screenings, and removes the requirement to report all screening results to affected individuals and maintain geographically indexed records. This section places the requirement to notify the individual tested, or the individual's parent or legal guardian if he or she is a minor, on the provider conducting or ordering the lead level screening.

Newborn Screening for Metabolic, Hereditary or Congenital Disorders

Section 6 amends s. 383.14(1)(c), F.S., to allow the state laboratory to release metabolic tests or screenings to a newborn's parent or legal guardian, the newborn's personal representative, or a person designated by the newborn's parent or legal guardian. This change aligns state law with federal regulations relating to public health laboratories.

[57] *Supra* note 48.
[58] Sections 381.982 - 381.985, F.S.

Section 6 amends s. 383.14(3)(f), F.S., to expand the DOH's duties in the newborn screening program to also promote the availability of genetic services, in addition to the availability of genetic studies and counseling, so that family members may benefit from detection and available knowledge of conditions even when no treatment is currently available.

Section 6 amends s. 383.14(5), F.S. to update the composition of the GNSAC to include a representative from four of the 10 medical schools in the state. The number of medical school representatives remains the same, but this change allows representatives from all medical schools in the state the potential to be appointed to the GNSAC, not just those medical schools in existence when the GNSAC was created.

Section 7: 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:

The bill has no 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: 381.004, 381.0202, 381.983, 381.984, 381.985, and 383.14.

IX. Additional Information:

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

CS by Health Policy on March 27, 2017:
The CS reinstates the requirement for the DOH to sponsor and seek participation from the private sector for public service announcements about lead poisoning prevention but adds a choice of media for the announcements including radio, television, the internet, or in print media, rather than requiring the use of all methods.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Montford

588-02964A-17 20171144c1

A bill to be entitled

An act relating to laboratory screening; amending s. 381.004, F.S.; clarifying that certain requirements related to the reporting of positive HIV test results to county health departments apply only to testing performed in a nonhealth care setting; amending s. 381.0202, F.S.; authorizing the Department of Health to perform laboratory testing for other states; amending s. 381.983, F.S.; redefining the term "elevated blood-lead levels"; amending s. 381.984, F.S.; revising requirements of a public information initiative on lead-based-paint hazards; revising requirements on the distribution of information on childhood lead poisoning developed by the State Surgeon General or his or her designee; amending s. 381.985, F.S.; revising requirements for the State Surgeon General's program for early identification of persons at risk of having elevated blood-lead levels; requiring the department to maintain records showing elevated blood-lead levels; requiring that health care providers report to the individual who was screened the results that indicate elevated blood-lead levels; amending s. 383.14, F.S.; authorizing the State Public Health Laboratory to release the results of a newborn's hearing and metabolic tests to certain individuals; requiring the department to promote the availability of services to promote detection of genetic conditions; clarifying that the membership of the Genetics and Newborn Screening Advisory Council

588-02964A-17 20171144c1

must include one member each from four of the medical schools in this state; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 381.004, Florida Statutes, is amended to read:

381.004 HIV testing.—

(2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

(a) Before performing an HIV test:

1. In a health care setting, the person to be tested shall be notified orally or in writing that the test is planned and that he or she has the right to decline the test. If the person to be tested declines the test, such decision shall be documented in the medical record. A person who has signed a general consent form for medical care is not required to sign or otherwise provide a separate consent for an HIV test during the period in which the general consent form is in effect.

2. In a nonhealth care setting, a provider shall obtain the informed consent of the person upon whom the test is to be performed. Informed consent shall be preceded by an explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test as provided by law. The provider shall also inform the test subject that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and provide him or her with information on the availability and location of sites where anonymous testing is

performed. As required in paragraph (3)(c), each county health department shall maintain a list of sites where anonymous testing is performed which includes site locations, telephone numbers, and hours of operation.

~~The test subject shall also be informed that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and of the availability and location of sites at which anonymous testing is performed. As required in paragraph (3)(c), each county health department shall maintain a list of sites at which anonymous testing is performed, including the locations, telephone numbers, and hours of operation of the sites.~~

Section 2. Section 381.0202, Florida Statutes, is amended to read:

381.0202 Laboratory services.—

(1) The department shall establish and maintain, in suitable and convenient places in the state, laboratories for microbiological and chemical analyses and any other purposes it determines necessary for the protection of the public health.

(2) The department may contract or agree with any person or public or private agency to provide laboratory services relating to or having potential impact on the public health or relating to the health of clients directly under the care of the state.

(3) The department is authorized to establish and collect reasonable fees and charges for laboratory services provided. Such fees and charges shall be deposited in a trust fund administered by the department and shall be used solely for this purpose.

(4) The department may perform laboratory testing related to public health for other states on a fee-for-service basis.

Section 3. Subsection (3) of section 381.983, Florida Statutes, is amended to read:

381.983 Definitions.—As used in this act, the term:

(3) "Elevated blood-lead level" means a quantity of lead in the ~~whole venous~~ blood, measured from a venous or capillary draw ~~expressed in micrograms per deciliter (ug/dL)~~, which exceeds the cutpoint specified in department rule. The determination of elevated blood-lead level must be based on national recommendations developed by the Council of State and Territorial Epidemiologists and the Centers for Disease Control and Prevention. ~~10 ug/dL or such other level as specifically provided in this act.~~

Section 4. Subsections (2) and (3) of section 381.984, Florida Statutes, are amended to read:

381.984 Educational programs.—

(2) PUBLIC INFORMATION INITIATIVE.—The Governor, in conjunction with the State Surgeon General and his or her designee, shall sponsor a series of public service announcements on radio, television, or the Internet, or in ~~and~~ print media about the nature of lead-based-paint hazards, the importance of standards for lead poisoning prevention in properties, and the purposes and responsibilities set forth in this act. In developing and coordinating this public information initiative, the sponsors shall seek the participation and involvement of private industry organizations, including those involved in real estate, insurance, mortgage banking, or ~~and~~ pediatrics.

(3) DISTRIBUTION OF INFORMATION ~~LITERATURE~~ ABOUT CHILDHOOD

LEAD POISONING.~~—By January 1, 2007,~~ The State Surgeon General or his or her designee shall develop culturally and linguistically appropriate information and distribution methods ~~pamphlets~~ regarding childhood lead poisoning, the importance of testing for elevated blood-lead levels, prevention of childhood lead poisoning, treatment of childhood lead poisoning, and, as ~~where~~ appropriate, the requirements of this act. This ~~These~~ information ~~pamphlets~~ shall be distributed to parents or ~~the other~~ legal guardians of children 6 years of age or younger on the following occasions:

(a) By a health care provider at the time of a child's birth and at the time of any childhood immunization or vaccination unless it is established that such information ~~pamphlet~~ has been provided ~~previously~~ to the parent or legal guardian by the health care provider within the prior 12 months.

(b) By the owner or operator of any child care facility or preschool or kindergarten class on or before each October 15 ~~of the calendar year~~.

Section 5. Section 381.985, Florida Statutes, is amended to read:

381.985 Screening program.—

(1) The State Surgeon General shall establish guidelines ~~a program~~ for early identification of persons at risk of having elevated blood-lead levels and for the systematic screening of ~~. Such program shall systematically screen~~ children under 6 years of age in the target populations identified in subsection (2) for the presence of elevated blood-lead levels. Children within the specified target populations shall be screened with a blood-lead test at age 12 months and age 24 months, or between the

ages of 36 months and 72 months if they have not previously been screened. The State Surgeon General shall, after consultation with recognized professional medical groups and such other sources as the State Surgeon General deems appropriate, adopt rules to follow established national guidelines or recommendations such as those issued by the Council of State and Territorial Epidemiologists and the Centers for Disease Control and Prevention related to reporting elevated blood-lead levels and screening results to the department pursuant to this section. ~~promulgate rules establishing:~~

~~(a) The means by which and the intervals at which such children under 6 years of age shall be screened for lead poisoning and elevated blood lead levels.~~

~~(b) Guidelines for the medical followup on children found to have elevated blood-lead levels.~~

(2) In developing screening programs to identify persons at risk with elevated blood-lead levels, priority shall be given to persons within the following categories:

(a) All children enrolled in the Medicaid program at ages 12 months and 24 months, or between the ages of 36 months and 72 months if they have not previously been screened.

(b) Children under the age of 6 years exhibiting delayed cognitive development or other symptoms of childhood lead poisoning.

(c) Persons at risk residing in the same household, or recently residing in the same household, as another person at risk with an elevated ~~a~~ blood-lead level ~~of 10 ug/dL or greater~~.

(d) Persons at risk residing, or who have recently resided, in buildings or geographical areas in which significant numbers

of cases of lead poisoning or elevated blood-lead levels have recently been reported.

(e) Persons at risk residing, or who have recently resided, in an affected property contained in a building that during the preceding 3 years has been subject to enforcement for violations of lead-poisoning-prevention statutes, ordinances, rules, or regulations ~~as specified by the State Surgeon General~~.

(f) Persons at risk residing, or who have recently resided, in a room or group of rooms contained in a building whose owner also owns a building containing affected properties which, during the preceding 3 years, has been subject to an enforcement action for a violation of lead-poisoning-prevention statutes, ordinances, rules, or regulations.

(g) Persons at risk residing in other buildings or geographical areas in which the State Surgeon General reasonably determines there is ~~to be~~ a significant risk of affected individuals having an elevated blood-lead level. ~~a blood-lead level of 10 ug/dL or greater.~~

(3) The department ~~State Surgeon General~~ shall maintain comprehensive records of all screenings indicating an elevated blood-lead level. ~~conducted pursuant to this section. Such records shall be indexed geographically and by owner in order to determine the location of areas of relatively high incidence of lead poisoning and other elevated blood-lead levels.~~

~~All cases or probable cases of lead poisoning found in the course of screenings conducted pursuant to this section shall be reported to the affected individual, to his or her parent or legal guardian if he or she is a minor, and to the State Surgeon~~

~~General.~~

(4) The results of screenings conducted pursuant to this section shall be reported by the health care provider who conducted or ordered the screening to the individual who was screened, or to the individual's parent or legal guardian if he or she is a minor.

Section 6. Paragraph (c) of subsection (1), paragraph (f) of subsection (3), and subsection (5) of section 383.14, Florida Statutes, are amended to read:

383.14 Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.—

(1) SCREENING REQUIREMENTS.—To help ensure access to the maternal and child health care system, the Department of Health shall promote the screening of all newborns born in Florida for metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect, as screening programs accepted by current medical practice become available and practical in the judgment of the department. The department shall also promote the identification and screening of all newborns in this state and their families for environmental risk factors such as low income, poor education, maternal and family stress, emotional instability, substance abuse, and other high-risk conditions associated with increased risk of infant mortality and morbidity to provide early intervention, remediation, and prevention services, including, but not limited to, parent support and training programs, home visitation, and case management. Identification, perinatal screening, and intervention efforts shall begin prior to and immediately following the birth of the child by the attending health care

provider. Such efforts shall be conducted in hospitals, perinatal centers, county health departments, school health programs that provide prenatal care, and birthing centers, and reported to the Office of Vital Statistics.

(c) *Release of screening results.*—Notwithstanding any law to the contrary, the State Public Health Laboratory may release, directly or through the Children's Medical Services program, the results of a newborn's hearing and metabolic tests or screenings to the newborn's health care practitioner, the newborn's parent or legal guardian, the newborn's personal representative, or a person designated by the newborn's parent or legal guardian. As used in this paragraph, the term "health care practitioner" means a physician or physician assistant licensed under chapter 458; an osteopathic physician or physician assistant licensed under chapter 459; an advanced registered nurse practitioner, registered nurse, or licensed practical nurse licensed under part I of chapter 464; a midwife licensed under chapter 467; a speech-language pathologist or audiologist licensed under part I of chapter 468; or a dietician or nutritionist licensed under part X of chapter 468.

(3) DEPARTMENT OF HEALTH; POWERS AND DUTIES.—The department shall administer and provide certain services to implement the provisions of this section and shall:

(f) Promote the availability of genetic studies, services, and counseling in order that the parents, siblings, and affected newborns may benefit from detection and available knowledge of the condition.

All provisions of this subsection must be coordinated with the

provisions and plans established under this chapter, chapter 411, and Pub. L. No. 99-457.

(5) ADVISORY COUNCIL.—There is established a Genetics and Newborn Screening Advisory Council made up of 15 members appointed by the State Surgeon General. The council shall be composed of two consumer members, three practicing pediatricians, at least one of whom must be a pediatric hematologist, one member ~~representative from~~ each from ~~of the~~ four of the medical schools in this ~~the~~ state, the State Surgeon General or his or her designee, one representative from the Department of Health representing Children's Medical Services, one representative from the Florida Hospital Association, one individual with experience in newborn screening programs, one individual representing audiologists, and one representative from the Agency for Persons with Disabilities. All appointments shall be for a term of 4 years. The chairperson of the council shall be elected from the membership of the council and shall serve for a period of 2 years. The council shall meet at least semiannually or upon the call of the chairperson. The council may establish ad hoc or temporary technical advisory groups to assist the council with specific topics which come before the council. Council members shall serve without pay. Pursuant to the provisions of s. 112.061, the council members are entitled to be reimbursed for per diem and travel expenses. It is the purpose of the council to advise the department about:

(a) Conditions for which testing should be included under the screening program and the genetics program.

(b) Procedures for collection and transmission of specimens and recording of results.

(c) Methods whereby screening programs and genetics services for children now provided or proposed to be offered in the state may be more effectively evaluated, coordinated, and consolidated.

Section 7. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Communications, Energy, and Public Utilities, *Vice Chair*
Appropriations
Appropriations Subcommittee on Pre-K - 12 Education
Health Policy
Rules

SENATOR BILL MONTFORD
3rd District

April 19, 2017

Senator Jack Latvala, Chair
Senate Full Appropriations Committee
201 The Capitol
Tallahassee, Florida 32399-1100

Dear Chair Latvala:

I respectfully request that the following bill be placed on the agenda for the next Appropriations Committee:

CS/SB 1144 – Laboratory Screening

Your consideration is greatly appreciated.

Sincerely,

William "Bill" Montford
Senate District 3

WM/md

Cc: Mike Hansen, Staff Director
Alicia Weiss, Administrative Assistant

REPLY TO:
❒ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
❒ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

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

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)

4/25/17
Meeting Date

1144
Bill Number (if applicable)

Topic Laboratory Screening

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Exec. Director

Address 2544 Blairstone Pines Dr.
Street

Phone 878-7364

Tallahassee FL 32301
City *State* *Zip*

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-25-17
Meeting Date

1144
Bill Number (if applicable)

Topic Laboratory Screening

Amendment Barcode (if applicable)

Name Tom Joos

Job Title Department of Health

Address 2585 Merchants Row Blvd
Street

Phone 850-245-4006

Tallahassee FL 32399
City *State* *Zip*

Email Thomas.Joos@flhealth.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Health

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 808
INTRODUCER:	Senator Mayfield
SUBJECT:	Maximum Class Size
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Androff	Graf	ED	**Favorable**
2.	Sikes	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Hansen	AP	**Pre-meeting**
4.			RC	

I. Summary:

SB 808 revises the maximum class size penalty calculation for public schools. Specifically, the bill:

- Modifies the penalty for exceeding maximum class size to be calculated at the school-wide average for all public schools, and
- Revises requirements for the compliance plan that noncompliant schools must submit to the Commissioner of Education.

The bill does not impact state revenues or expenditures.

The bill takes effect July 1, 2017.

II. Present Situation:

Florida law specifies maximum class size requirements for public schools.

Maximum Class Size

In 2002, Florida voters approved the Class Size Reduction Amendment ("CSRA") to the Florida Constitution.[1] The amendment requires the Legislature to enact provisions implementing the amendment by the beginning of the 2010 school year.[2] Specifically, the provisions must ensure that the maximum number of students assigned to each teacher in a public school does not exceed:[3]

[1] Art. IX, s. 1(a), Fla. Const.
[2] *Id.*
[3] *Id.*; *see* s. 1003.03(1), F.S.

- 18 students for prekindergarten through grade 3;
- 22 students for grades 4 through 8; and
- 25 students for grades 9 through 12.

Florida law expressly exempts extracurricular classes from the class size mandate.[4] The class size requirements apply solely to core-curricular courses defined by law.[5]

Traditional Public Schools

Currently, traditional public school class size compliance requirements are calculated at the classroom level.[6] Traditional public schools must meet class size limits for every core-curricula course.[7] If a school district fails to comply with the specified class size requirements, the school district's class size reduction categorical funds are reduced.[8]

Other Public Schools

District school boards annually report the number of students attending various public schools of choice in accordance with rules adopted by the State Board of Education. In 2010, the compliance calculation for public charter schools was changed from a classroom level average to a school-level average.[9] In 2013, the school-level average calculation was applied to district operated schools of choice.[10] In 2016, the Legislature granted the same school-level treatment to schools participating in the Principal Autonomy Pilot Program Initiative (PAPPI).[11]

Innovation schools of technology are schools that have adopted a blended learning strategy on a schoolwide basis.[12] A blended learning program is an education program in which a student learns in part through online delivery of content and instruction with some element of student control over time, place, path or pace and in part at a supervised brick-and-mortar location away from a student's home.[13] The calculation for compliance with maximum class size requirements is the average at the school level for innovation schools of technology.[14]

[4] Art. IX, s. 1(a), Fla. Const.; s. 1003.03, F.S.
[5] *Id.*; s. 1003.01(14), F.S.
[6] Each year, on or before the October student membership survey, the maximum number of students assigned to each teacher who is teaching core-curricula courses for prekindergarten through grade 3 may not exceed 18 students, school classrooms for grades 4-8 may not exceed 22 students, and core-curricula courses in grades 9-12 may not exceed 25 students. *See* ss. 1003.03(1), F.S. and 1002.33(16)(b)3., F.S.
[7] Section 1003.01(14), F.S.
[8] Section 1003.03(4), F.S.
[9] Section 6, ch. 2010-154, L.O.F.
[10] Section 1002.31(5), F.S. as amended by s. 9 ch. 2013-250, L.O.F.
[11] Section 1011.6202(3)(b)7., F.S.; s. 1, ch. 2016-223, L.O.F.
[12] Section 1002.451(1)(b), F.S.
[13] *Id.*
[14] *Id.* at (5)(a)3.

Funding

The CSRA requires that the Legislature provide sufficient funds for the school districts to reduce the number of students in each classroom by at least two students annually until the constitutionally prescribed maximum number of students is achieved.[15] The implementing statute specified that the number of students per classroom be measured at the:[16]

- District level for each of the three grade groupings during fiscal years 2003-2006.
- School level for each of the three grade groupings in fiscal years 2006-2009.
- Individual classroom level for each of the three grade groupings in fiscal years 2009-2010 and thereafter.

To implement the CSRA, the Legislature annually appropriates class size reduction categorical funding for school district operating costs.[17] Additionally, the Legislature has appropriated funds for capital outlay needs and granted bonding authority to fund classroom construction and other capital needs related to class size reduction.[18]

Noncompliance Penalty

The Florida Department of Education (DOE) is required to reduce class size categorical funding for school districts and charter schools that are out of compliance with class size requirements.[19] The penalty is calculated at the classroom level for traditional public schools and at the school level for charter schools, district-operated schools of choice, innovation schools of technology, and schools enrolled in PAPPI.[20] The DOE calculates the penalty for traditional public schools that are out of compliance as follows:[21]

- Step 1: Identify, for each grade group, the number of classrooms which exceed the maximum and the total number of students which exceed the maximum for all classes.
- Step 2: Determine the number of full-time equivalent (FTE) students which exceed the maximum for each grade group.
- Step 3: Multiply the total number of FTE students over the maximum for each grade grouping by the district's FTE dollar amount of the class size reduction operating categorical allocation for that year and calculate the total for all three grade groupings.
- Step 4: Multiply the total number of FTE students over the maximum for all classes by an amount equal to 50 percent of the base student allocation adjusted by the district cost differential for the 2013-2014 fiscal year.

A school district's class size reduction operating categorical allocation is then reduced by an amount equal to the sum of the calculations in Steps 3 and 4.[22] Beginning in the 2014-2015 fiscal year and thereafter, the total number of FTE students over the maximum for all classes must be

[15] Art. IX, s. 1(a), Fla. Const.
[16] Section 2, ch. 2003-391, L.O.F.
[17] Florida Department of Education, *Class Size Implementation Budget*, http://www.fldoe.org/finance/budget/class-size/index.stml (last visited March 20, 2017).
[18] *Id.*
[19] Section 1003.03(4)(a)5., F.S.
[20] Sections 1002.31(5), 1002.33(16)(b), 1002.451(5)(a)3., 1003.03(4)(a)1., and 1011.6202(3)(b)7., F.S.
[21] Section 1003.03(4)(a), F.S.
[22] *Id.* at (4)(a)5.

multiplied by 100 percent, rather than 50 percent, of the base student allocation adjusted by the district cost differential, thereby increasing the amount of the penalty (see Step 4).

The reduced amount is the lesser of the DOE's calculation or the undistributed balance of the school district's class size reduction operating categorical allocation. If a district made appropriate efforts to reduce class sizes, but still failed to achieve compliance or an emergency caused noncompliance, the Commissioner of Education is authorized to recommend an alternative transfer amount for approval by the Legislative Budget Commissioner.[23] Once the reduced amount is determined, after district appeals, the Commissioner of Education must prepare a reallocation of the funds made available as a bonus to districts that have fully met the class size requirements by calculating an amount that is up to 5 percent of the base student allocation, multiplied by the total district FTE students.[24] The reallocation total may not exceed 25 percent of the total funds reduced.

School districts that fail to comply with class size requirements must submit a plan certified by the district school board by February 1, which describes the actions the district will take in order to be in compliance by October of the following year.[25] For districts that submit the plan by the required deadline, the funds remaining after the reallocation calculation must be added back to the district's class size reduction operating categorical allocation based on each qualifying district's proportion of the total reduction for all qualifying districts for which a reduction was calculated.[26] The amount added back may not be greater than the amount that was reduced.[27]

III. Effect of Proposed Changes:

This bill revises the maximum class size penalty calculations for public schools. Specifically:

- Sections 1, 2, and 3 remove the class size penalty calculation exemption to the school-wide average for charter schools, district-operated schools of choice, district innovation schools of technology, and schools participating in the Principal Autonomy Pilot Program Initiative because the penalty calculation for all schools will be calculated at the school-wide average. This means that the class size penalty calculation will be determined by using the same methodology for all public schools.
- Section 4 revises the method for calculating the penalty for schools that fail to comply with the class size requirements by calculating Steps 2, 3, and 4 of the formula (as described in the Present Situation of this Analysis) at the school average instead of at the classroom level. This may reduce the penalty for the public schools that are not in compliance with class size requirements.
- Section 4 repeals an increase in the penalty calculation that began with the 2014-2015 fiscal year, by returning the penalty calculation to 50 percent of the base student allocation rather than 100 percent. This may reduce the class size penalty for school districts that are out of compliance with the class size requirements.
- Section 4 exempts a school district that has not complied with the class size limits specified in law (based on the 2017-2018 October student survey) and has timely submitted their

[23] Section 1003.03(4)(c), F.S.
[24] *Id.* at (4)(d).
[25] *Id.* at (4)(e).
[26] *Id.*
[27] *Id.*

certified plan (that describes future actions that will be taken for compliance) from the class size penalty for the 2017-2018 and 2018-2019 fiscal years. Such school districts have until the 2018-2019 October student survey to comply with the class size limit requirements. Additionally, such school districts must provide an updated plan by February 1, 2019, to the Commissioner of Education.

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:

This bill does not impact state revenues or expenditures. The bill revises the class size penalty calculation for traditional public schools by performing the calculation at the school average instead of at the classroom level. The bill will likely reduce the penalty for school districts that fail to comply with the maximum class size requirements. The bill may also eliminate the penalty for a noncompliant school district in the 2017-2018 and 2018-2019 fiscal years if the school district submits its certified plan for compliance in a timely maner.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.31, 1002.33, 1002.451, 1003.03, 1011.6202.

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 Mayfield

17-01052-17 2017808__

A bill to be entitled

An act relating to maximum class size; amending s. 1002.31, F.S.; deleting a provision relating to compliance with maximum class size requirements for certain public schools of choice; amending s. 1002.33, F.S.; revising requirements for charter school compliance with maximum class size requirements; amending s. 1002.451, F.S.; revising requirements for district innovation school of technology compliance with maximum class size requirements; amending s. 1003.03, F.S.; calculating a school district's class size categorical allocation reduction at the school average when maximum class size requirements are not met; providing an exemption from the reduction of a school district's class size categorical allocation for specified fiscal years; requiring an updated plan for compliance with class size requirements from certain districts for a specified fiscal year; amending s. 1011.6202, F.S.; revising requirements for compliance with maximum class size requirements for a school participating in the Principal Autonomy Pilot Project Program; providing an effective date.

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

Section 1. Subsection (5) of section 1002.31, Florida Statutes, is amended to read:

1002.31 Controlled open enrollment; Public school parental choice.—

~~(5) For a school or program that is a public school of choice under this section, the calculation for compliance with maximum class size pursuant to s. 1003.03(4) is the average number of students at the school level.~~

17-01052-17 2017808__

Section 2. Paragraph (b) of subsection (16) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(16) EXEMPTION FROM STATUTES.—

(b) Additionally, a charter school shall be in compliance with the following statutes:

1. Section 286.011, relating to public meetings and records, public inspection, and criminal and civil penalties.

2. Chapter 119, relating to public records.

3. Section 1003.03, relating to the maximum class size~~, except that the calculation for compliance pursuant to s. 1003.03 shall be the average at the school level~~.

4. Section 1012.22(1)(c), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011.

7. Section 1012.34, relating to the substantive requirements for performance evaluations for instructional personnel and school administrators.

Section 3. Paragraph (a) of subsection (5) of section 1002.451, Florida Statutes, is amended to read:

1002.451 District innovation school of technology program.—

(5) EXEMPTION FROM STATUTES.—

(a) An innovation school of technology is exempt from chapters 1000-1013. However, an innovation school of technology shall comply with the following provisions of those chapters:

1. Laws pertaining to the following:

a. Schools of technology, including this section.

b. Student assessment program and school grading system.

c. Services to students who have disabilities.

d. Civil rights, including s. 1000.05, relating to discrimination.

e. Student health, safety, and welfare.

2. Laws governing the election and compensation of district school board members and election or appointment and compensation of district school superintendents.

3. Section 1003.03, governing maximum class size~~, except that the calculation for compliance pursuant to s. 1003.03 is the average at the school level~~.

4. Sections 1012.22(1)(c) and 1012.27(2), relating to compensation and salary schedules.

5. Section 1012.33(5), relating to workforce reductions, for annual contracts for instructional personnel. This subparagraph does not apply to at-will employees.

6. Section 1012.335, relating to contracts with instructional personnel hired on or after July 1, 2011, for annual contracts for instructional personnel. This subparagraph does not apply to at-will employees.

7. Section 1012.34, relating to requirements for performance evaluations of instructional personnel and school administrators.

Section 4. Subsection (4) of section 1003.03, Florida Statutes, is amended to read:

1003.03 Maximum class size.—

(4) ACCOUNTABILITY.—

(a) If the department determines that the number of

students assigned to any individual class exceeds the class size maximum, as required in subsection (1), based upon the October student membership survey, the department shall:

1. ~~Identify, for each grade group, the number of classes in which the number of students exceeds the maximum and the total number of students which exceeds the maximum for all classes.~~

~~2.~~ Determine the number of FTE students which exceeds the maximum for each grade group calculated at the school average.

2.~~3.~~ Multiply the total number of FTE students which exceeds the maximum for each grade group calculated at the school average by the district's FTE dollar amount of the class size categorical allocation for that year and calculate the total for all three grade groups.

3.~~4.~~ Multiply the total number of FTE students which exceeds the maximum for all classes calculated at the school average by an amount equal to 50 percent of the base student allocation adjusted by the district cost differential ~~for each of the 2010-2011 through 2013-2014 fiscal years and by an amount equal to the base student allocation adjusted by the district cost differential in the 2014-2015 fiscal year and thereafter~~.

4.~~5.~~ Reduce the district's class size categorical allocation by an amount equal to the sum of the calculations in subparagraphs 2. and 3. ~~and 4.~~

(b) The amount of funds reduced shall be the lesser of the amount calculated in paragraph (a) or the undistributed balance of the district's class size categorical allocation. The Florida Education Finance Program Appropriation Allocation Conference shall verify the department's calculation in paragraph (a). The commissioner may withhold distribution of the class size

categorical allocation to the extent necessary to comply with paragraph (a).

(c) In lieu of the reduction calculation in paragraph (a), if the Commissioner of Education has evidence that a district was unable to meet the class size requirements despite appropriate efforts to do so or because of an extreme emergency, the commissioner may recommend by February 15, subject to approval of the Legislative Budget Commission, the reduction of an alternate amount of funds from the district's class size categorical allocation.

(d) Upon approval of the reduction calculation in paragraphs (a)-(c), the commissioner must prepare a reallocation of the funds made available for the districts that have fully met the class size requirements. The funds shall be reallocated by calculating an amount of up to 5 percent of the base student allocation multiplied by the total district FTE students. The reallocation total may not exceed 25 percent of the total funds reduced.

(e) Each district that has not complied with the requirements in subsection (1) shall submit to the commissioner by February 1 a plan certified by the district school board that describes the specific actions the district will take in order to fully comply with the requirements in subsection (1) by October of the following school year. If a district submits the certified plan by the required deadline, the funds remaining after the reallocation calculation in paragraph (d) shall be added back to the district's class size categorical allocation based on each qualifying district's proportion of the total reduction for all qualifying districts for which a reduction was

calculated in paragraphs (a)-(c). However, no district shall have an amount added back that is greater than the amount that was reduced.

(f) The department shall adjust school district class size reduction categorical allocation distributions based on the calculations in paragraphs (a)-(e).

(g) A district that has not complied with the requirements in subsection (1) based on the October student membership survey for the 2017-2018 school year and has timely submitted the required plan under paragraph (e) may not have its class size categorical allocation reduced for the 2017-2018 and 2018-2019 fiscal years. The district shall have until the October student membership survey for the 2018-2019 school year to comply with subsection (1); however, the district must provide an updated plan by February 1, 2019, to the commissioner to ensure the district is working to comply with the requirements of subsection (1).

Section 5. Paragraph (b) of subsection (3) of section 1011.6202, Florida Statutes, is amended to read:

1011.6202 Principal Autonomy Pilot Program Initiative.—The Principal Autonomy Pilot Program Initiative is created within the Department of Education. The purpose of the pilot program is to provide the highly effective principal of a participating school with increased autonomy and authority to operate his or her school in a way that produces significant improvements in student achievement and school management while complying with constitutional requirements. The State Board of Education may, upon approval of a principal autonomy proposal, enter into a performance contract with up to seven district school boards for

participation in the pilot program.

(3) EXEMPTION FROM LAWS.—

(b) A participating school shall comply with the provisions of chapters 1000-1013, and rules of the state board that implement those provisions, pertaining to the following:

1. Those laws relating to the election and compensation of district school board members, the election or appointment and compensation of district school superintendents, public meetings and public records requirements, financial disclosure, and conflicts of interest.

2. Those laws relating to the student assessment program and school grading system, including chapter 1008.

3. Those laws relating to the provision of services to students with disabilities.

4. Those laws relating to civil rights, including s. 1000.05, relating to discrimination.

5. Those laws relating to student health, safety, and welfare.

6. Section 1001.42(4)(f), relating to the uniform opening date for public schools.

7. Section 1003.03, governing maximum class size~~, except that the calculation for compliance pursuant to s. 1003.03 is the average at the school level for a participating school~~.

8. Sections 1012.22(1)(c) and 1012.27(2), relating to compensation and salary schedules.

9. Section 1012.33(5), relating to workforce reductions for annual contracts for instructional personnel. This subparagraph does not apply to at-will employees.

10. Section 1012.335, relating to annual contracts for

instructional personnel hired on or after July 1, 2011. This subparagraph does not apply to at-will employees.

11. Section 1012.34, relating to personnel evaluation procedures and criteria.

12. Those laws pertaining to educational facilities, including chapter 1013, except that s. 1013.20, relating to covered walkways for relocatables, and s. 1013.21, relating to the use of relocatable facilities exceeding 20 years of age, are eligible for exemption.

13. Those laws pertaining to participating school districts, including this section and ss. 1011.69(2) and 1012.28(8).

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education, *Vice Chair*
Appropriations Subcommittee on the Environment and Natural Resources
Appropriations Subcommittee on General Government
Banking and Insurance
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

SENATOR DEBBIE MAYFIELD
17th District

April 18, 2017

Chairman Jack Latvala
Appropriation Committee
404 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 808

Dear Chairman Latvala,

I am respectfully requesting Senate Bill 808, a bill relating to the Maximum Class Size, be placed on the agenda for your committee on Appropriations.

I appreciate your consideration of this bill and I look forward to working with you and the Appropriations committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

Senator Debbie Mayfield
District 17

Cc: Mike Hansen, Alicia Weiss, Drew Aldikacti, Tracy Caddell, and Rich Reidy, Tim Sadberry, John Shettle, Joe McVaney, Lily Tysinger

REPLY TO:
❒ 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
❒ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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)

4/25
Meeting Date

808
Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly Ct
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 772 204 1792

Email lwvfadvocacy@gmail.com

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.

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/CS/SB 240
INTRODUCER:	Appropriations Committee; Health Policy Committee; Banking and Insurance Committee; and Senator Lee and others
SUBJECT:	Direct Primary Care
DATE:	April 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Lloyd	Stovall	HP	**Fav/CS**
3.	Loe	Williams	AHS	**Recommend: Favorable**
4.	Loe	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 240 amends the Florida Insurance Code (code) to provide that a direct primary care agreement is not insurance and is not subject to regulation under the code. Direct primary care (DPC) is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. The bill also defines and establishes DPC agreements in chapter 456, Florida Statutes, relating to general provisions for health care practitioners.

Through a contractual agreement, a patient pays a monthly fee, usually between $50 and $100 per individual, to the primary care provider for defined primary care services. As of June 2016, 16 states have adopted DPC laws that define DPC as a medical service outside the scope of state insurance regulation. The bill defines terms and specifies certain provisions, including consumer disclosures, which must be included in a DPC agreement.

Health maintenance organizations (HMOs) participating in the Statewide Medicaid Managed Care (SMMC) program are required to provide Medicaid recipients the opportunity to select DPC agreements as a delivery service option.

The AHCA is expected to incur minimal workload as a result of this bill, but these costs should be absorbed within existing resources.

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

II. Present Situation:

Direct Primary Care

Direct primary care is a primary care medical practice model that eliminates third party payers from the provider-patient relationship. Through a contractual agreement, a patient generally pays a monthly retainer fee, on average $77 per individual,[1] to the primary care provider for defined primary care services, such as office visits, preventive care, annual physical examination, and routine laboratory tests.

After paying the monthly fee, a patient can access all services under the agreement at no extra charge based on the terms of the agreement. Typically, DPC practices provide routine preventive services, screenings, or tests, like lab tests, mammograms, Pap screenings, and vaccinations. A primary care provider DPC model can be designed to address most health care issues, including women's health services, pediatric care, urgent care, wellness education, and chronic disease management.

Some of the potential benefits of the DPC model for providers include reducing patient volume, minimizing administrative and staffing expenses; increasing time with patients; and increasing revenues. In the DPC practice model, the primary care provider eliminates administrative costs associated with filing and resolving insurance claims. Direct primary care practices claim to reduce expenses by more than 40 percent by eliminating administrative staff resources associated with third-party costs.[2]

In 2014, the American Academy of Private Physicians (AAPP) estimated that approximately 5,500 physicians operate under some type of direct financial relationship with their patients, outside of standard insurance coverage. According to the AAPP, that number has increased around 25 percent per year since 2010.[3] The Direct Primary Care Coalition has adopted model state legislation for DPC agreements.[4] As of June 2016, 16 states have adopted DPC legislation, which defines DPC as a medical service outside the scope of state insurance regulation.[5]

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[1] A study of 141 DPC practices found the average monthly retainer fee to be $77.38. Of the 141 practices identified, 116 (82 percent) have cost information available online. When these 116 practices were analyzed, the average monthly cost to the patient was $93.26 (median monthly cost, $75.00; range, $26.67 to $562.50 per month). Of the 116 DPCs noted, 36 charged a one-time enrollment fee and the average enrollment fee was $78. Twenty-eight of 116 DPCs charged a fee for office visits in addition to the retainer fee, and the average visit fee was $16. *See* Phillip M. Eskew and Kathleen Klink, *Direct Primary Care: Practice Distribution and Cost Across the Nation*, Journal of the Amer. Bd. of Family Med. (Nov.-Dec. 2015) Vol. 28, No. 6, p. 797, *available at:* http://www.jabfm.org/content/28/6/793.full.pdf (last viewed Feb. 10, 2017).

[2] Lisa Zamosky, Direct-Pay Medical Practices Could Diminish Payer Headaches, MEDICAL ECONOMICS, (April 24, 2014), http://medicaleconomics.modernmedicine.com/medical-economics/content/tags/concierge-service/direct-pay-medical-practices-could-diminish-payer-h. (last viewed Feb. 10, 2017).

[3] David Twiddy, *Practice Transformation: Taking the Direct Primary Care Route*, Family Practice Management, No. 3, (May-June 2014), *available at:* http://www.aafp.org/fpm/2014/0500/p10.html (last viewed Feb. 10, 2017).

[4] Direct Primary Care Coalition Model State Legislation, *available at:* http://www.dpcare.org/dpcc-model-legislation. (last viewed Feb. 10, 2017).

[5] See http://www.dpcare.org/ (last viewed Feb. 10, 2017).

The DPC practice model is often compared to the concierge practice model. However, while both provide access to primary care services for a periodic fee, the concierge model continues to bill third party payers, such as insurers, in addition to the collection of membership and retainer fees.[6]

Federal Health Care Reform and Direct Primary Care

The federal Patient Protection and Affordable Care Act (PPACA)[7] requires health insurers to make guaranteed issue 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 that insurers that offer qualified health plans (QHPs) provide 10 categories of essential health benefits,[8] which includes preventive[9] care and other benefits.

The PPACA addresses the DPC practice model as part of health care reform. A QHP may provide coverage through a DPC medical home plan that meets criteria[10] established by the federal Department of Health and Human Services (DHHS), provided the QHP meets all other applicable requirements.[11] Insureds who are enrolled in a DPC medical home plan are compliant with the individual mandate if they have coverage for other services, such as a wraparound catastrophic health policy[12] or high deductible, health insurance plans[13] to provide coverage for severe injuries or chronic conditions.

In Colorado and Washington, qualified health plans offer DPC medical home coverage on the state-based health insurance exchanges.[14] One of those qualified health plans also participates as a managed care plan in Washington and offers access to its DPC medical home provider sites for its Medicaid managed care plan enrollees. The three clinics offer extended office hours and 24/7 access to physicians for the recipients.[15]

In Michigan, for the 2016-2017 state fiscal year, the DHHS through the annual appropriations bill has been tasked to review and consider implementing a pilot program to allow Medicaid enrollees in managed care to participate in a direct primary care provider plan. Outcomes and performance specified in that bill include:

- The number of enrollees in the pilot program by Medicaid eligibility category;
- Direct primary care cost per enrollee; and

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[6] Eskew and Klink, s*upra* note 1, at 793.
[7] Pub. Law No. 111-148 (Mar. 23, 2010) amended by Pub. Law. No. 111-152 (Mar. 30, 2010).
[8] 42 U.S.C. s.18022.
[9] Available at: https://www.hhs.gov/healthcare/about-the-law/preventive-care/index.html#. (last viewed Feb. 13, 2017). Many of these preventive services must be covered without any cost sharing by the patient.
[10] The HHS has not adopted criteria to date.
[11] *See* 42 U.S.C. ss. 18021(a)(3) and 18022.
[12] Catastrophic plans are a form of high deductible plans, which meet the minimum essential coverage requirements. See 42 U.S.C. s. 18021 for eligibility and coverage requirements.
[13] A high deductible health plan (HDHP) has a higher deductible than typical plans and a maximum limit on amount of the annual deductible and out-of-pocket medical expenses that an insured must pay for covered expenses. Out-of-pocket expenses include copayments and other amounts, excluding premiums.
[14] See http://www.akleg.gov/basis/get_documents.asp?session=29&docid=7936 (last visited Feb. 13, 2017).
[15] Qliance, *New Primary Care Model Delivers 20 Percent Lower Overall Healthcare Costs, Increases Patient Satisfaction,* State of Reform (Jan. 15, 2015) http://stateofreform.com/news/industry/healthcare-providers/2015/01/qliance-study-shows-monthly-fee-primary-care-model-saves-20-percent-claims/ (last viewed Feb. 21, 2017).

- Other Medicaid managed care cost savings generated from direct primary care.[16]

While the DHHS regulations do not consider DPC medical homes as insurance,[17] the Internal Revenue Service (IRS) regulations will not permit tax deductions for those individuals with both health savings accounts (HSAs) and DPCs as the tax code considers the DPC a second health plan.[18] The IRS Code additionally does not permit the periodic payments made to primary care physicians under a DPC model to qualify as a medical expense under Section 213(d) of the IRS Code.

State Regulation of Insurance

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities. These specified entities must meet certain requirements for licensure. The AHCA issues regulations regarding the quality of care provided by HMOs and prepaid health clinics under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO and a prepaid health clinic must receive a Health Care Provider Certificate[19] from the AHCA pursuant to part III of ch. 641, F.S.[20]

Currently, Florida law does not address DPC agreements. However, a medical provider offering DPC agreements may be considered to be operating a prepaid health clinic if the medical provider is offering to provide services in exchange for a prepaid fixed fee.[21]

Prepaid Health Clinics

Prepaid health clinics[22] are required to obtain a certificate of authority from the OIR pursuant to part II of chapter 641, F.S. The entity must meet minimum surplus requirements[23] and comply with solvency protections for the benefit of subscribers by securing insurance or filing a surety bond with the OIR.[24] Part II also provides that the procedures for offering basic services and offering and terminating contracts to subscribers may not unfairly discriminate based on age, health, or economic status.[25]

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[16] 2016 Mich. Pub. Acts No. 268; section 1701; (*See:* http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0268.pdf).
[17] 45 C.F.R. s. 156.245 (10-1-2016).
[18] 26 U.S. Code s. 223
[19] Section 641.49, F.S.
[20] Section 641.48, F.S., provides that the purpose of part III of ch. 641, F.S., is to ensure that HMOs and prepaid health clinics deliver high-quality care to their subscribers.
[21] Part II of ch. 641, F.S.
[22] Section 641.402, F.S., defines the term, "prepaid health clinic," to mean any organization authorized under part II that provides, either directly or through arrangements with other persons, basic services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed-sum basis, including those basic services which subscribers might reasonably require to maintain good health. However, no clinic that provides or contracts for, either directly or indirectly, inpatient hospital services, hospital inpatient physician services, or indemnity against the cost of such services shall be a prepaid health clinic.
[23] Section 641.406, F.S. Each prepaid health clinic must maintain minimum surplus in the amount of $150,000 or 10 percent of total liabilities, whichever is greater.
[24] Section 641.409, F.S.
[25] Section 641.406, F.S.

Prepaid Limited Health Service Organizations

Prepaid limited health service organizations provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment authorized under ch. 636, F.S. Limited health services include ambulance, dental, vision, mental health, substance abuse, chiropractic, podiatric, and pharmaceutical. Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

State Regulation of Health Care Practitioners

The Department of Health (DOH) is responsible for the licensure and regulation of most health care practitioners in the state. In addition to the regulatory authority in specific practice acts for each profession or occupation, ch. 456, F.S., provides the general regulatory provisions for health care professions within the DOH, Medical Quality Assurance Division.

Section 456.001, F.S., defines "health care practitioner" as any person licensed under chs. 457, (acupuncture); 458 (medicine); 459 (osteopathic medicine); 460 (chiropractic medicine); 461 (podiatric medicine); 462 (naturopathic medicine); 463 (optometry); 464 (nursing); 465 (pharmacy); 466 (dentistry and dental hygiene); 467 (midwifery); 478 (electrology or electrolysis); 480 (massage therapy); 484 (opticianry and hearing aid specialists); 486 (physical therapy); 490 (psychology); 491 (psychotherapy), F.S., or parts III or IV of ch. 483 (clinical laboratory personnel or medical physics), F.S.

Additionally, the miscellaneous professions and occupations regulated in parts I, II, III, V, X, XIII, or XIV (speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics) of ch. 468, F.S., are considered health care practitioners under s. 456.001, F.S.

Florida Medicaid

The Medicaid program is a partnership between the federal government and state governments to provide medical care to low income children, pregnant women, individuals with disabilities, and individuals 65 years of age and older. Each state operates its own Medicaid program under a state plan that must be approved by the federal Centers for Medicare & Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

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. The AHCA is designated as the single state Medicaid agency and has the lead responsibility for the overall program.[26]

[26] *See* s. 409.963, F.S.

Over 4 million Floridians are currently enrolled in Medicaid.[27] The Medicaid program's estimated expenditures for the 2016-2017 fiscal year are $25.8 billion.[28] The current traditional federal share is 60.99 percent with the state paying 39.01 percent for Medicaid enrollees.[29] Florida has the fourth largest Medicaid population in the country and fifth largest in expenditures.[30]

Medicaid currently covers:

- 47 percent of Florida's children;
- 63 percent of Florida's births; and
- 61 percent of Florida's nursing homes days.[31]

The structures of state Medicaid programs vary from state to state, and each state's share of expenditures also varies and is largely determined by the federal government. Approximately 85 percent of Florida's Medicaid program is enrolled in managed care. 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.[32] Applicants must also agree to cooperate with Child Support Enforcement during the application process and eligibility process.[33]

Minimum eligibility coverage thresholds are established in federal law for certain population groups, such as children and pregnant women, 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.[34] States can add benefits, pending federal approval. Florida has added benefits, including prescription drugs, adult dental services, and dialysis.[35] For children under age 21, the benefits must include the Early and Periodic Screening, Diagnostic

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[27] Agency for Health Care Administration, *Report of Medicaid Eligibles* (Dec. 31, 2016) (on file with the Senate Committee on Health Policy).
[28] Social Services Estimating Conference, *Medicaid Services Expenditures* (Dec. 7, 2016) *available at:* www.edr.state.fl.us/Content/conferences/medicaid/medexp_summary.pdf
[29] Office of Economic and Demographic Research, *Social Services Estimating Conference - Official FMAP Estimate* (November 2016) *available at:* http://edr.state.fl.us/Content/conferences/medicaid/fmap.pdf (last viewed Feb. 20, 2017). The SSEC has also created a "real time" FMAP blend" for the Statewide Medicaid Managed Care Program, which is 60.99 percent for SFY 2016-17.
[30] Agency for Health Care Administration, Senate Health and Human Services Appropriations Committee Presentation, *Agency for Health Care Administration - Florida Medicaid* (January 11, 2017), at slide 2, *available at:* http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AHS/MeetingRecords/MeetingPacket_3554.pdf (last viewed Feb. 20, 2017).
[31] Id at 10.
[32] Florida Dep't of Children and Families, *Family-Related Medicaid Programs Fact Sheet*, p. 4 (April 2016) *available at:* http://www.dcf.state.fl.us/programs/access/docs/Family-RelatedMedicaidFactSheet.pdf (last viewed Feb. 21, 2017).
[33] Id.
[34] Section 409.905, F.S.
[35] Section 409.906, F.S.

and Treatment services, which are those health care, diagnostic services, 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.[36]

Statewide Medicaid Managed Care

Part IV of ch. 409, F.S., was created in 2011 by ch. 2011-134, L.O.F., and governs the Statewide Medicaid Managed Care (SMMC) program. The program, authorized under federal Medicaid waivers, is designed for the AHCA to issue invitations to negotiate[37] 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. SMMC has two components: managed medical assistance (MMA) and long-term care managed care (LTCMC).

The LTCMC component began enrolling Medicaid recipients in August 2013 and completed its statewide roll-out in March 2014. The MMA component began enrolling Medicaid recipients in May 2014 and finished its roll-out in August 2014. As of December 2016, there were over 3.2 million Medicaid recipients enrolled in an MMA plan and 94,320 recipients enrolled in an LTC plan.[38]

III. Effect of Proposed Changes:

Direct Primary Care Agreements in Statewide Medicaid Managed Care (Section 1)

Section 1 amends s. 409.973, F.S., to direct HMOs participating in the SMMC program to offer Medicaid recipients the option to enter into a direct primary care agreement with identified network primary care providers. The HMOs are encouraged to enter into alternative payment arrangements with in-network primary care providers to allow Medicaid recipients to elect a direct primary care agreement within the SMMC program.

Direct Primary Care Agreements (Sections 2 and 3)

Section 2 creates s. 456.0625, F.S., to recognize direct primary care agreements within ch. 456, F.S., relating to the general provisions for health care practitioners.

Section 2 defines the following terms within ch. 456, F.S.:

- "Direct primary care agreement" is a contract between a primary care provider and a patient, the patient's legal representative, or an employer which must satisfy certain requirements within the bill and does not indemnify for services provided by a third party.
- "Primary care provider" is a licensed health care practitioner under ch. 458, F.S., (medical doctor or physician assistant); ch. 459, F.S., (osteopathic doctor or physician assistant); ch. 460, F.S., (chiropractic physician); or ch. 464, F.S., (nurses and advanced registered nurse

[36] *See* Section 1905 9(r) of the Social Security Act.
[37] An "invitation to negotiate" is a written or electronically posted solicitation for vendors to submit competitive, sealed replies for the purpose of selecting one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. *See* s. 287.012(17), F.S.
[38] Agency for Health Care Administration, *Supra* note 30, at slide 12.

practitioners); or a primary care group practice that provides medical services which are commonly provided without referral from another health care provider.
- "Primary care service" is the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

Section 2 authorizes a primary care provider or an agent of the primary care provider to execute a DPC agreement. Section 3 expressly exempts DPC agreements from the Florida Insurance Code. Additionally, the act of entering into a DPC agreement does not constitute the business of insurance and would not be subject to any chapter of the Florida Insurance Code.

To market, sell, or offer to sell a DPC agreement a primary care provider or agent of a primary care provider is not required to obtain a certification of authority or license under any chapter of the Florida Insurance Code, pursuant to s. 456.0625, F.S.

Section 2 specifies the following minimum requirements and disclosures for DPC agreements:
- Be in writing and signed by the provider or the provider's agent and the patient, the patient's legal representative, or their employer;
- Allow a party to terminate the agreement with 30 days' advance written notice and provide for the immediate termination of the agreement if the physician-patient relationship is violated or a party breaches the terms of the agreement;
- Describe the scope of primary care services covered by the monthly fee;
- Specify the monthly fee and any fees for primary care services not covered by the monthly fee;
- Specify the duration of the agreement and any automatic renewal provisions;
- Offer a refund of monthly fees paid in advance if the provider ceases to offer primary care services for any reason; and
- Contain the following statements in contrasting color and 12-point or larger type on the same page as the applicant's signature:
  - "This agreement is not insurance, and the primary care provider will not file any claims against the patient's health insurance policy or plan for reimbursement of any primary care services covered by this agreement."
  - "This agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148."
  - "This agreement is not workers' compensation insurance and may not replace the employer's obligations under ch. 440, F.S."

Section 4 provides that 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:

This bill removes regulatory uncertainty for health care providers by stating that the direct primary care agreement is not insurance, and as a result, the OIR does not regulate the agreements. This statutory change eliminates a long-standing concern with part II of ch. 641, F.S., which requires licensure and regulation of prepaid health clinics. Currently, that section of the code is unclear about the treatment of these types of arrangements with providers. To date, the OIR has not licensed any direct primary care providers under part II to provide such services.[39]

Additional primary care providers may elect to pursue a direct primary care model and establish direct primary care practices that may increase patients' access to affordable primary care services.

Many individuals have high deductible policies and must meet a significant out of pocket cost to access many types of medical care. The DPC agreements may provide a less expensive option for accessing certain services. For many patients, the greater use of direct primary care agreements may decrease reliance on emergency rooms as a source of routine care.

C. Government Sector Impact:

The establishment of the DPC agreements under ch. 456, F.S., the chapter relating to general provisions for health care practitioners, means that oversight responsibility for the actions of health care practitioners will fall under the Department of Health and the appropriate healthcare professional boards. The department could see an increase in complaint activity to the extent that issues arise between practitioners and patients with DPC agreements.

The AHCA will incur costs related to the submission of the federal waiver or waiver amendment for the SMMC program required under this bill; however, these costs should be absorbed within existing resources.

[39] Office of Insurance Regulation, *Senate Bill 240 Analysis* (Jan. 17, 2017) (on file with the Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not include a provision relating to non-discrimination based on health status. The model bill provides the following:

> Direct primary care practices may not decline to accept new direct primary care patients or discontinue care to existing patients solely because of the patient's health status. A direct practice may decline to accept a patient if the practice has reached its maximum capacity, or if the patient's medical condition is such that the provider is unable to provide the appropriate level and type of primary care services the patient requires.[40]

VIII. Statutes Affected:

This bill substantially amends section 409.977 of the Florida Statutes.

This bill creates the following new sections of the Florida Statutes: 456.0625 and 624.27.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 25, 2017:
The CS/CS/CS removes the requirement for AHCA to submit a Medicaid waiver or waiver amendment to the appropriate federal authorities to provide Medicaid enrollees the opportunity to choose DPC agreements within the Statewide Medicaid Managed Care program. The CS/CS/CS requires HMOs to offer Medicaid recipients the option to enter into a direct primary care agreement with identified network primary care providers, and are encouraged to enter into alternative payment arrangements with in-network primary care providers to allow Medicaid recipients to elect a direct primary care agreement within the SMMC program.

CS/CS by Health Policy on February 21, 2017:
The CS/CS retains the exemption of the DPC agreements from the Florida Insurance Code in ch. 624, F.S., and defines and establishes DPC agreements in ch. 456, F.S. The CS/CS also directs the AHCA to submit a Medicaid waiver or waiver amendment to the appropriate federal authorities to provide Medicaid enrollees the opportunity to choose DPC agreements within the Statewide Medicaid Managed Care program.

CS by Banking and Insurance on February 7, 2017:
The CS provides an additional mandatory disclosure to the direct primary care agreement

[40] *See* http://www.dpcare.org/dpcc-model-legislation (last viewed Feb. 13, 2017.)

that states that the agreement is not workers' compensation insurance and may not replace the employer's obligation under ch. 440, F.S.

B. Amendments:

None.

183112

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete lines 24 - 58
and insert:
Section 1. Subsection (4) of section 409.973, Florida Statutes, is amended to read:
409.973 Benefits.—
(4) PRIMARY CARE INITIATIVE.—Each plan operating in the managed medical assistance program shall establish a program to encourage enrollees to establish a relationship with their primary care provider. Plans shall provide enrollees with the

183112

opportunity to enter into a direct primary care agreement with identified network primary care providers. Plans are encouraged to enter into alternative payment arrangements with primary care providers in their networks to allow for the election by a recipient for a direct primary care agreement within the Statewide Medicaid Managed Care program. In addition, each plan shall:

(a) Provide information to each enrollee on the importance of and procedure for selecting a primary care provider, and thereafter automatically assign to a primary care provider any enrollee who fails to choose a primary care provider.

(b) If the enrollee was not a Medicaid recipient before enrollment in the plan, assist the enrollee in scheduling an appointment with the primary care provider. If possible the appointment should be made within 30 days after enrollment in the plan. For enrollees who become eligible for Medicaid between January 1, 2014, and December 31, 2015, the appointment should be scheduled within 6 months after enrollment in the plan.

(c) Report to the agency the number of enrollees assigned to each primary care provider within the plan's network.

(d) Report to the agency the number of enrollees who have not had an appointment with their primary care provider within their first year of enrollment.

(e) Report to the agency the number of emergency room visits by enrollees who have not had at least one appointment with their primary care provider.

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

And the title is amended as follows:

183112

Delete lines 3 - 9

and insert:

409.973, F.S.; requiring plans operating in the managed medical assistance program to provide enrollees an opportunity to enter into a direct primary care agreement with identified network primary care providers; encouraging such plans to enter into alternative payment arrangements with network primary care providers for a specified purpose; creating s.

By the Committees on Health Policy; and Banking and Insurance; and Senators Lee and Mayfield

588-01932-17 2017240c2

A bill to be entitled

An act relating to direct primary care; amending s. 409.977, F.S.; requiring the Agency for Health Care Administration to provide specified financial assistance to certain Medicaid recipients; requiring the agency to resubmit, by a specified date, certain federal waivers or waiver amendments to specified federal entities to incorporate recipient elections of certain direct primary care agreements; creating s. 456.0625, F.S.; defining terms; authorizing primary care providers or their agents to enter into direct primary care agreements for providing primary care services; providing applicability; specifying requirements for direct primary care agreements; creating s. 624.27, F.S.; providing construction and applicability of the Florida Insurance Code as to direct primary care agreements; providing an exception for primary care providers or their agents from certain requirements under the code under certain circumstances; providing an effective date.

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

Section 1. Subsection (4) of section 409.977, Florida Statutes, is amended to read:

409.977 Enrollment.—

(4) The agency shall:

(a) Develop a process to enable a recipient with access to employer-sponsored health care coverage to opt out of all

588-01932-17 2017240c2

managed care plans and to use Medicaid financial assistance to pay for the recipient's share of the cost in such employer-sponsored coverage.

(b) Contingent upon federal approval, ~~the agency shall also~~ enable recipients with access to other insurance or related products providing access to health care services created pursuant to state law, including any product available under the Florida Health Choices Program, or any health exchange, to opt out.

(c) Provide ~~The amount of~~ financial assistance ~~provided~~ for each recipient in an amount ~~may~~ not to exceed the amount of the Medicaid premium which ~~that~~ would have been paid to a managed care plan for that recipient opting to receive services under this subsection.

(d) ~~The agency shall~~ Seek federal approval to require Medicaid recipients with access to employer-sponsored health care coverage to enroll in that coverage and use Medicaid financial assistance to pay for the recipient's share of the cost for such coverage. The amount of financial assistance provided for each recipient may not exceed the amount of the Medicaid premium that would have been paid to a managed care plan for that recipient.

(e) By January 1, 2018, resubmit an appropriate federal waiver or waiver amendment to the Centers for Medicare and Medicaid Services, the United States Department of Health and Human Services, or any other designated federal entity to incorporate the election by a recipient for a direct primary care agreement, as defined in s. 456.0625, within the Statewide Medicaid Managed Care program.

Section 2. Section 456.0625, Florida Statutes, is created to read:

456.0625 Direct primary care agreements.—

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

(a) "Direct primary care agreement" means a contract between a primary care provider and a patient, the patient's legal representative, or an employer which meets the requirements specified under subsection (3) and which does not indemnify for services provided by a third party.

(b) "Primary care provider" means a health care practitioner licensed under chapter 458, chapter 459, chapter 460, or chapter 464 or a primary care group practice that provides medical services to patients which are commonly provided without referral from another health care provider.

(c) "Primary care service" means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

(2) A primary care provider or an agent of the primary care provider may enter into a direct primary care agreement for providing primary care services. Section 624.27 applies to a direct primary care agreement.

(3) A direct primary care agreement must:

(a) Be in writing.

(b) Be signed by the primary care provider or an agent of the primary care provider and the patient, the patient's legal representative, or an employer.

(c) Allow a party to terminate the agreement by giving the other party at least 30 days' advance written notice. The

agreement may provide for immediate termination due to a violation of the physician-patient relationship or a breach of the terms of the agreement.

(d) Describe the scope of primary care services that are covered by the monthly fee.

(e) Specify the monthly fee and any fees for primary care services not covered by the monthly fee.

(f) Specify the duration of the agreement and any automatic renewal provisions.

(g) Offer a refund to the patient of monthly fees paid in advance if the primary care provider ceases to offer primary care services for any reason.

(h) Contain, in contrasting color and in not less than 12-point type, the following statements on the same page as the applicant's signature:

1. This agreement is not health insurance, and the primary care provider will not file any claims against the patient's health insurance policy or plan for reimbursement of any primary care services covered by this agreement.

2. This agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

3. This agreement is not workers' compensation insurance and may not replace the employer's obligations under chapter 440, Florida Statutes.

Section 3. Section 624.27, Florida Statutes, is created to read:

624.27 Application of code as to direct primary care

agreements.—

(1) A direct primary care agreement, as defined in s. 456.0625, does not constitute insurance and is not subject to any chapter of the Florida Insurance Code. The act of entering into a direct primary care agreement does not constitute the business of insurance and is not subject to any chapter of the Florida Insurance Code.

(2) A primary care provider or an agent of a primary care provider is not required to obtain a certificate of authority or license under any chapter of the Florida Insurance Code to market, sell, or offer to sell a direct primary care agreement pursuant to s. 456.0625.

Section 4. 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 21, 2017

I respectfully request that **Senate Bill #240**, relating to the Direct Primary Care, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

340
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City *State* *Zip*

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

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.

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)

4/25/17
Meeting Date

240
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Nuland

Job Title _____

Address 1000 Riverside Ave #240
Street

Jacksonville, FL 32204
City *State* *Zip*

Phone 904-233-3051

Email nulandlaw@aol.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Chapter, American College of Physicians

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)

4/25/17
Meeting Date

240
Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title

Address 1430 Piedmont Dr E
Street

Phone 8502246496

TLH FL 32308
City *State* *Zip*

Email MThomas@flmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

240
Bill Number (if applicable)

Topic DIRECT PRIMARY CARE

Amendment Barcode (if applicable)

Name SAL NUZZO

Job Title VP POLICY

Address 100 N DUVAL
Street

TALL FL 32301
City *State* *Zip*

Phone 850-322-9941

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing THE JAMES MADISON INST.

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)

4/25/17
Meeting Date

240
Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Exec. Director

Address 2544 Blairstone Pines Dr.
Street

Phone 878-7364

Tallahassee FL 32301
City *State* *Zip*

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-2017
Meeting Date

SB 240
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic DIRECT PRIMARY CARE

Name JACK HEBERT

Job Title GOVT. RELATIONS DIR.

Address 2861 EXECUTIVE DR. *Street*

Phone 7275603323

CLEARWATER *City* FL *State* 33762 *Zip*

Email JACK@FCACHRO.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CHIROPRACTIC 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)

4/25/17
Meeting Date

240
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-445-5367

Email tim.nungesser@nfib.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Federation of Independent Business

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)

4/25
Meeting Date

240
Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 South Monroe Street
Street

Phone 850-205-9000

TLH FL 32301
City *State* *Zip*

Email

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

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

Representing Florida Academy of Family Physicians

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

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

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

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

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)

4-25-17
Meeting Date

240
Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Policy Analyst

Address 200 W College Ave
Street

Tallahassee FL
City *State* *Zip*

Phone 0

Email ahosek@afphq.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 1588
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee and Senators Latvala and Hukill
SUBJECT:	Military and Veteran Support
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon/Sanders	Ryon	MS	**Fav/CS**
2.	Parks	Cibula	JU	**Favorable**
3.	Sneed	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1588 contains provisions relating to rental housing for military servicemembers, veteran-owned businesses, employment of military spouses, and student veteran support. Specifically, the bill:

- Requires expedited processing of a housing rental application, if required, for a military servicemember's spouse and other adult dependents who plan to reside with the servicemember;
- Directs the Florida Department of Veterans' Affairs to create a website to streamline the procedure for applying for certification as a veteran business enterprise;
- Provides that the Supreme Court of Florida may admit the spouse of a military servicemember to practice law in Florida, if the Florida Board of Bar Examiners certifies that the spouse meets certain requirements;
- Requires the Department of Education to expedite the processing of an application for educator certification submitted by the spouse of a military servicemember; and
- Provides legislative intent regarding academic credit for military training and coursework and collaboration between the State Board of Education and the Board of Governors on student veteran issues.

The bill requires the Florida Department of Veteran's Affairs to develop and maintain a website. According to the department, the cost to develop the website is projected to be $100,000 and the cost for the annual maintenance of the website is projected to be $25,000. This bill contains no funding for the department to create and maintain the website.

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

II. Present Situation:

Rental Housing Applications for Military Servicemembers

In 2016, the Legislature created s. 83.683, F.S., which provides that if a landlord requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of such rental application within 7 days, if the prospective tenant is a military servicemember. This provision also applies to condominium associations, cooperative associations, and homeowners associations.

Florida Veteran Business Enterprise Opportunity Act

The Florida Veteran Business Enterprise Opportunity Act[1] exists to rectify the economic disadvantage of service-disabled veterans[2] and to recognize wartime veterans[3] for their sacrifices. The Department of Management Services' (DMS) Office of Supplier Diversity, in partnership with the Florida Department of Veterans' Affairs, is administering the Veteran Business Enterprises program. The DMS is responsible for working with the Department of Veterans' Affairs to establish a certification procedure and either granting, denying, or revoking the certification of a veteran business enterprise. Responsibilities of the Department of Veterans' Affairs include:

- Assisting the DMS in establishing a certification procedure, which shall be reviewed biennially and updated as necessary;
- Identifying eligible veteran business enterprises by any electronic means (including email or website) or by any other reasonable means; and
- Encouraging and assisting eligible veteran business enterprises to apply for certification under this section.

The application process for a veteran business enterprise requires a business to register as a vendor on MyFloridaMarketPlace, which serves as the state's procurement website, and submit the required documentation to the Office of Supplier Diversity.[4] In order to be certified as a veteran business enterprise, a business enterprise must be an independently owned and operated business that:

- Employs 200 or fewer permanent full-time employees;
- Has a net worth of $5 million or less;
- Is domiciled in Florida;

[1] Section 295.187, F.S.
[2] A service-disabled veteran is defined as a veteran who is a permanent Florida resident with a service-connected disability as determined by the United States Department of Veterans Affairs or who has been terminated from military service by reason of disability by the United States Department of Defense. See s. 295.187(3)(b), F.S.
[3] A wartime veteran is a veteran that served in a campaign or expedition for which a campaign badge has been authorized or during a specified period of wartime service. *See* s. 295.187(3)(d), F.S.
[4] Department of Management Services (DMS), Office of Supplier Diversity (OSD), *Get Certified*, http://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd/get_certified (last visited Mar. 24, 2017).

- Is at least 51 percent owned by one or more wartime veterans or service-disabled veterans; and
- Is managed and controlled by one or more wartime veterans or service-disabled veterans or, for a service-disabled veteran with a permanent and total disability, by the spouse or permanent caregiver of the veteran.

Certification as a veteran business enterprise by the Office of Supplier Diversity is valid for a two-year period after which the business must renew its certification. Currently, a veteran business enterprise can renew its certification online through the DMS website.[5] During fiscal year 2015-2016, there were 440 Florida businesses with a current certification as a veteran business enterprise.[6]

Pursuant to s. 295.187, F.S., a veteran business enterprise is entitled to vendor preference. Vendor preference requires a state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a certified veteran business enterprise, which are equal with respect to all relevant considerations including price, quality, and service, to award such procurement or contract to the certified veteran business enterprise.[7]

Admission to Practice Law in Florida

Article V, s. 15 of the State Constitution provides that the Supreme Court of Florida has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.[8] The requirements and procedures for admission to The Florida Bar are established in the Rules of the Supreme Court Relating to Admissions to the Bar (rules), which are administered by the Florida Board of Bar Examiners.[9]

Persons seeking admission to The Florida Bar must meet the character and fitness qualifications set forth by the rules, file the appropriate applications and fees, and comply with the rules governing background investigations and the bar examination.[10] To be qualified for admission to The Florida Bar, an applicant must produce satisfactory evidence of good moral character, an adequate knowledge of the standards and ideals of the profession, and proof that the applicant is otherwise fit to take the oath and to perform the obligations and responsibilities of an attorney.[11]

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[5] DMS, Office of Supplier Diversity, *Recertification Information*, http://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd/get_certified/recertification_information (last visited Mar. 24, 2017).
[6] DMS, Office of Supplier Diversity, *Office of Supplier Diversity Annual Report Fiscal Year 2015-2016*, p. 7, http://www.dms.myflorida.com/content/download/130365/809851/OSD_15-16_annual_report_Final.pdf (last visited Mar. 18, 2017).
[7] Other benefits available to veteran business enterprises and other certified business enterprises, such as women and minority-owned businesses, include: first tier referrals to state agencies for contract opportunities; business development guidance from established corporations; participation at regional workshops, seminars, and corporate roundtables; and inclusion in an exclusive listing of state-certified minority business enterprises in an online directory.
[8] Fla. Const. art. V, section 15.
[9] Fla. Bar Admiss. R. 1-10.
[10] Fla. Bar Admiss. R. 2-10.
[11] Fla. Bar Admiss. R. 2-12.

An applicant must also sit for the Florida Bar Examination (exam). The exam consists of two components to include the General Bar Examination and the Multistate Professional Responsibility Examination (MPRE).[12] To be considered for admission to The Florida Bar, an applicant must produce satisfactory evidence of technical competence by passing all parts of the exam.[13] Additionally, the applicant must hold a Bachelor of Laws or Juris Doctor degree from an accredited law school.[14]

Currently, a spouse of a military servicemember is not permitted to practice law in Florida without meeting all of the requirements established in the Bar rules. On February 1, 2017, the Florida Board of Bar Examiners filed a petition with the Supreme Court of Florida to amend the rules by proposing a new subchapter authorizing military spouses to practice law in Florida under certain circumstances.[15]

Florida Educator Certification

In order for a person to serve as an educator in a traditional public school, charter school, virtual school, or other publicly operated school, the person must hold a certificate issued by the Florida Department of Education (DOE).[16] Persons seeking employment at a public school as a school supervisor, school principal, teacher, library media specialist, school counselor, athletic coach, or in another instructional capacity must be certified.[17] The purpose of certification is to require school-based personnel to "possess the credentials, knowledge, and skills necessary to allow the opportunity for a high-quality education in the public schools."[18]

The DOE issues three types of educator certificates:

- **Professional Certificate.** The professional certificate is Florida's highest type of full-time educator certification. The professional certificate is valid for five years and is renewable.[19]
- **Temporary Certificate.** The temporary certificate covers employment in full-time positions for which educator certification is required. The temporary certificate is valid for three years and is nonrenewable.[20]
- **Athletic Coaching Certificate.** The athletic coaching certificate covers full-time and part-time employment as a public school's athletic coach.[21]

A person seeking an educator certificate must submit an application to the DOE and remit the required fee.[22] Within 90 calendar days of receiving a completed application, the DOE must issue a professional or temporary certificate, depending on the applicant's qualifications. If the applicant does not meet the requirements for a professional or temporary certificate, the DOE

[12] Fla. Bar Admiss. R. 4-11.
[13] Fla. Bar Admiss. R. 4-13.
[14] Fla. Bar Admiss. R. 4-13.1.a.
[15] *See* Supreme Court of Florida, *Petition to Amend the Rules Regulating the Florida Bar, SC17-156* (Feb. 1, 2017), http://jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2017&p_casenumber=156 (last visited Mar. 24, 2017).
[16] Sections 1012.55(1) and 1002.33(12)(f), F.S.
[17] Sections 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S.
[18] Section 1012.54, F.S.
[19] Section 1012.56(7)(a), F.S.
[20] Section 1012.56(7), F.S.
[21] Section 1012.55(2), F.S.
[22] Section 1012.56(1), F.S.

must provide a statement of eligibility that advises the applicant of any qualifications that must be completed to qualify for certification.

To be eligible for an educator certificate, a person must:[23]

- Be at least 18 years of age;
- Sign an affidavit attesting that the applicant will uphold the U.S. and State Constitutions;
- Earn a bachelor's or higher degree from an accredited institution of higher learning or from a non-accredited institution identified by the DOE as having a quality program resulting in a bachelor's or higher degree;
- Submit to fingerprinting and background screening and not have a criminal history that requires the applicant's disqualification from certification or employment;
- Be of good moral character; and
- Be competent and capable of performing the duties, functions, and responsibilities of a teacher.

An applicant seeking a professional certificate must:

- Meet the basic eligibility requirements for certification;[24]
- Demonstrate mastery of general knowledge;[25]
- Demonstrate mastery of subject area knowledge;[26] and
- Demonstrate mastery of professional preparation and education competence.[27]

A three-year nonrenewable temporary certificate[28] may be issued to an applicant who does not qualify for the professional certificate, but meets the basic eligibility requirements for certification[29] and:

- Obtains full-time employment in a position that requires a Florida educator certificate by a school district or private school that has a professional education competence demonstration program;[30] and
- Demonstrates mastery of subject area knowledge.[31]

An educator who is employed under a temporary certificate must demonstrate mastery of general knowledge[32] within one calendar year after employment in order to remain employed in a

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[23] Section 1012.56(2)(a)-(f), F.S.
[24] Section 1012.56(2)(a)-(f), F.S.
[25] Section 1012.56(2)(g), F.S. *See* Florida Department of Education, *General Knowledge*, http://www.fldoe.org/edcert/mast_gen.asp (last visited Feb. 23, 2017).
[26] Section 1012.56(2)(h), F.S.
[27] Section 1012.56(2)(i), F.S.; Florida Department of Education, *Professional Preparation and Education Competence*, http://www.fldoe.org/teaching/certification/general-cert-requirements/professional-preparation-edu-competenc.stml (last visited Mar. 24,, 2017).
[28] Section 1012.56 (7)(b), F.S.
[29] Section 1012.56(2)(a)-(f) and (7)(b), F.S.
[30] Section 1012.56(1)(b), F.S.
[31] Section 1012.56(5), F.S.
[32] Mastery of general knowledge may be demonstrated through several methods, including achieving a passing score on the Florida General Knowledge Test or achieving passing scores established in state board rule on national or international examinations that test comparable content and relevant standards in verbal, analytical writing, and quantitative reasoning skills (*e.g.*, the verbal, analytical writing, and quantitative reasoning portions of the Graduate Record Examination). See s. 1012.56(3), F.S.

position that requires a certificate.[33] The DOE may extend the validity period of a temporary certificate for two years if the requirements for the professional certificate (not including the mastery of general knowledge requirement) are not completed due to serious illness or injury of the applicant or other extraordinary extenuating circumstances.[34]

Veterans' Training and Coursework

State Board of Education – Florida College System

The State Board of Education is the chief implementing and coordinating body of public education in Florida, except for the State University System.[35] In accordance with Article IX, Section 2, of the State Constitution, the State Board of Education is responsible for supervising the system of free public education as provided by law and appoints the Commissioner of the Department of Education.

There are 28 locally-governed public colleges in the Florida College System. While governed by local boards, the colleges are coordinated under the jurisdiction of the State Board of Education. Administratively, the Chancellor of Florida Colleges is the chief executive officer of the system, reporting to the Commissioner of Education who serves as the chief executive officer of Florida's K-20 System.[36]

Board of Governors - State University System

The Board of Governors is the governing body for the State University System of Florida. In accordance with Article IX, Section 7(d), of the State Constitution, it is required to "operate, regulate, control, and be fully responsible for the management of the whole university system." Currently, there are 12 institutions within the State University System (SUS).[37] The SUS enrolls more than 337,000 students, offers nearly 1,800 degree programs at the baccalaureate, graduate, and professional levels, and annually awards more than 81,000 degrees at all levels.[38]

College Credit for Military Training and Education

Section 1004.096, F.S., requires the Board of Governors to adopt regulations and the State Board of Education to adopt rules that enable eligible members of the U.S. Armed Forces to earn academic college credit at public postsecondary educational institutions for college-level training and education acquired in the military.[39] Accordingly, Board of Governors Regulation 6.013 and Rule 6A-14.0302 of the Florida Administrative Code, require all Florida universities and colleges, respectively, to have an established policy and process in place for evaluating military training and education. Pursuant to both the rule and regulation, such military training and education must be recognized by the American Council on Education (ACE).

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[33] Section 1012.56(7), F.S.
[34] *Id.*
[35] Section 1001.02(1), F.S.
[36] Florida Department of Education, *About Us*, http://www.fldoe.org/schools/higher-ed/fl-college-system/about-us (last visited Mar. 24, 2017).
[37] State University System of Florida, Board of Governors, *2025 System Strategic Plan*, 5 (Mar. 2016), http://www.flbog.edu/pressroom/_doc/2025_System_Strategic_Plan_Revised_FINAL.pdf.
[38] *Id.*
[39] Chapter 2012-169, Laws of Fla.

Priority Course Registration for Veterans

Section 1004.075, F.S., requires each Florida College System institution and state university to provide priority course registration for veterans receiving GI Bill benefits if the institution offers priority course registration for any segment of the student population.[40] Additionally, a spouse and dependent child of a veteran to whom GI Bill benefits have been transferred are also entitled to priority course registration until the expiration of their GI Bill benefits.[41]

III. Effect of Proposed Changes:

Section 1 amends s. 83.683, F.S., to provide that the current requirement for a landlord to process a housing rental application from a military servicemember within seven days also applies to the servicemember's spouse or any adult dependents of the servicemember who are to reside in the same rental unit. The extension of this provision also applies to condominium associations, cooperative associations, and homeowners associations.

Section 2 amends s. 295.187, F.S., to direct the Florida Department of Veterans' Affairs to create a website to streamline the procedure for applying for certification as a veteran business enterprise.

Section 3 amends s. 454.021, F.S., to provide that the Supreme Court of Florida may admit the spouse of a military servicemember, as defined in s. 250.01, F.S., to practice law in Florida given that he or she is certified by the Florida Board of Bar Examiners. Certification by the board is contingent on the applicant:

- Registering in the Defense Enrollment Eligibility Report System established by the U. S. Department of Defense;
- Holding a Juris Doctor or Bachelor of Laws degree from a law school accredited by the American Bar Association;
- Being licensed to practice law in another state, the District of Columbia, or a territory of the U.S. after having passed a written exam;
- Establishing that he or she is a member in good standing in all jurisdictions where licensed to practice law and that he or she is not currently subject to discipline or a pending disciplinary matter relating to the practice of law;
- Demonstrating his or her presence in Florida as the spouse of a servicemember; and
- Otherwise fulfilling all requirements for admission to practice law in Florida.

The Supreme Court of Florida may specify circumstances under which the license and authorization for a military spouse to practice law in Florida terminates.

Section 4 amends s. 1012.56, F.S., to require the DOE to expedite the processing of an application for an educator certificate submitted by the spouse of a military servicemember.[42] The DOE must process the application and issue a professional or temporary educator certificate

[40] Chapter 2012-159, Laws of Fla.
[41] *Id.*
[42] The term servicemember is defined in section 250.01, F.S., as any person serving as a member of the United States Armed forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

or a statement of status of eligibility within 60 calendar days after receiving the completed application. Current law requires the DOE to process an application for an educator certificate within 90 calendar days for all applicants.

The bill also requires the State Board of Education to adopt rules to allow the DOE to extend the validity period of a temporary educator certificate for two years if an applicant fails to meet the requirements for the professional certificate due to the fact that the applicant is the spouse of a servicemember stationed in Florida. Current law allows the DOE to extend the validity period of a temporary educator certificate for two years because of serious illness or injury or other extraordinary extenuating circumstances.

Section 5 provides legislative intent regarding the provision of college credit for military training and coursework and other services to student veterans. The bill provides that it is the intent of the Legislature that the State Board of Education and the Board of Governors work collaboratively to do the following:

- Align existing degree programs with applicable military training and experience to maximize academic credit awarded for such training and experience;
- Appoint and train specific faculty within each degree program at each institution as liaisons and contacts for veterans;
- Incorporate outreach services tailored to disabled veterans to inform disabled veterans of disability services provided by the U.S. Department of Veterans Affairs, and other federal and state agencies, and private entities.
- Facilitate statewide meetings for campus personnel to discuss and develop best practices, exchange ideas and experiences, and hear presentations by individuals with expertise in the unique needs of veterans; and
- Provide veterans with sufficient courses required for graduation, including but not limited to giving priority registration for veterans.

Section 6 provides an effective date of 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:

Article V, s. 15 of the State Constitution, the Supreme Court of Florida has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline

of persons admitted. The bill states that the Supreme Court may admit the spouse of a military servicemember, as defined in section 250.01, F.S., to practice law in Florida if the Florida Board of Bar Examiners certifies that he or she meets certain requirements. Because the bill does not require the Supreme Court to admit any person to the practice of law in Florida, the bill does not intrude on the Supreme Court's authority.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will enable spouses of military servicemembers to find employment more quickly by minimizing some of the impediments to obtaining any required licenses and certifications.

C. Government Sector Impact:

Section 2 of the bill requires the Florida Department of Veterans' Affairs to create a website for businesses to apply for certification as a Veteran Business Enterprise. According to the department, the costs will be $100,000 of nonrecurring funds to develop the website and $25,000 annually to maintain the website.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 83.683, 295.187, 454.021, and 1012.56. The bill also creates undesignated sections of Florida law.

IX. Additional Information:

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

CS by Military and Veterans Affairs, Space, and Domestic Security on March 22, 2017:
The CS provides that the requirement for a landlord, condominium association, cooperative association, and homeowners association to process a housing rental application from a military servicemember within seven days of submission also applies

to the servicemember's spouse or any adult dependents of the servicemember who are to reside in the same rental unit.

B. Amendments:

None.

818190

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 35 - 84

and insert:

Section 1. Section 295.156, Florida Statutes, is created to read:

295.156 Alternative treatment options for veterans.—

(1) Subject to legislative appropriation, the Department of Veterans' Affairs shall contract with one or more individuals, corporations not for profit, state universities, or Florida

818190

College System institutions to provide alternative treatment options for veterans who have been certified by the United States Department of Veterans Affairs or any branch of the United States Armed Forces as having a traumatic brain injury or posttraumatic stress disorder. For purposes of this section, the term "alternative treatment" means a therapeutic service that is not part of the standard of medical care established by the United States Department of Veterans Affairs for treating traumatic brain injury or posttraumatic stress disorder but has been shown by at least one scientific or medical peer-reviewed study to have some positive effect on traumatic brain injury or posttraumatic stress disorder. Alternative treatment must be provided under the direction and supervision of an individual licensed under chapter 458, chapter 459, chapter 460, chapter 464, chapter 490, or chapter 491.

(2) Each contracted individual or entity shall report annually to the department each alternative treatment provided, the number of veterans served, and the treatment outcomes.

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

And the title is amended as follows:

Delete lines 3 - 12

and insert:

creating s. 295.156, F.S.; requiring the Department of Veterans' Affairs, subject to appropriation, to contract with individuals and entities to provide alternative treatment options for certain veterans; defining the term "alternative treatment"; requiring alternative treatment to be provided under the

818190

direction and supervision of certain licensed individuals; requiring a contracted individual or entity to submit an annual report to the department;

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Gibson) recommended the following:

Senate Amendment to Amendment (818190)

Delete line 11

and insert:

College System institutions which have a background in veterans' health care to provide alternative treatment

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Latvala

583-02710-17 20171588c1

A bill to be entitled

An act relating to military and veteran support; amending s. 83.683, F.S.; requiring landlords, condominium associations, cooperative associations, and homeowners' associations that require a servicemember's spouse or certain adult dependents to submit a rental application to complete the processing of the application of within a specified timeframe; amending s. 295.187, F.S.; requiring the Department of Veterans' Affairs to create a website to streamline the procedure for businesses applying for certification as a veteran business enterprise; amending s. 454.021, F.S.; authorizing the Supreme Court to admit on motion a bar applicant who is the spouse of a servicemember stationed in this state under certain circumstances; amending s. 1012.56, F.S.; requiring the Department of Education to expedite the processing of an application for educator certification submitted by a spouse of a servicemember stationed in this state; requiring the State Board of Education to adopt rules regarding extending validity of a temporary certificate if the applicant is a spouse of a servicemember stationed in this state; providing legislative findings and intent regarding continuing education for veterans of the United States Armed Forces; providing legislative intent to require collaboration between the State Board of Education and the Board of Governors of the State University System in achieving specified goals regarding educational

583-02710-17 20171588c1

opportunities for veterans; providing an effective date.

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

Section 1. Section 83.683, Florida Statutes, is amended to read:

83.683 Rental application by a servicemember.—

(1) If a landlord requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. If the landlord requires the servicemember's spouse or any adult dependents of the servicemember who are to reside in the same rental unit to submit a rental application, the landlord must process those applications within the same 7-day period. Absent a timely denial of the rental application, the landlord must lease the rental unit to the servicemember if all other terms of the application and lease are complied with.

(2) If a condominium association, as defined in chapter 718, a cooperative association, as defined in chapter 719, or a homeowners' association, as defined in chapter 720, requires a prospective tenant of a condominium unit, cooperative unit, or parcel within the association's control to complete a rental application before residing in a rental unit or parcel, the association must complete processing of a rental application

submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. If the association requires the servicemember's spouse or any adult dependents of the servicemember who are to reside in the same unit or parcel to submit a rental application, the association must process those applications within the same 7-day period. Absent a timely denial of the rental application, the association must allow the unit or parcel owner to lease the rental unit or parcel to the servicemember and the landlord must lease the rental unit or parcel to the servicemember if all other terms of the application and lease are complied with.

(3) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

Section 2. Present paragraph (d) of subsection (6) of section 295.187, Florida Statutes, is redesignated as paragraph (e), and a new paragraph (d) is added to that subsection, to read:

295.187 Florida Veteran Business Enterprise Opportunity Act.—

(6) DUTIES OF THE DEPARTMENT OF VETERANS' AFFAIRS.—The department shall:

(d) Create a website to streamline the procedure for applying for certification as a veteran business enterprise.

Section 3. Subsection (4) is added to section 454.021, Florida Statutes, to read:

454.021 Attorneys; admission to practice law; Supreme Court

to govern and regulate.—

(4)(a) The Supreme Court of Florida may admit on motion an applicant as an attorney at law authorized to practice in this state if the applicant is a spouse of a servicemember, as defined in s. 250.01, stationed in this state and upon certification by the Florida Board of Bar Examiners that the applicant meets the following requirements:

1. The applicant has registered in the Defense Enrollment Eligibility Reporting System established by the United States Department of Defense;

2. The applicant holds a Juris Doctor or Bachelor of Laws from a law school accredited by the American Bar Association;

3. The applicant is licensed to practice law in another state, the District of Columbia, or a territory of the United States after having passed a written exam;

4. The applicant can establish that he or she is a member in good standing in all jurisdictions where licensed to practice law and that he or she is not currently subject to discipline or a pending disciplinary matter relating to the practice of law;

5. The applicant can demonstrate his or her presence in this state as a spouse of a servicemember; and

6. The applicant has otherwise fulfilled all requirements for admission to practice law in this state.

(b) The Supreme Court of Florida may specify circumstances under which the license and authorization to practice law in this state of an attorney licensed in accordance with paragraph (a) terminates.

Section 4. Subsections (1) and (7) of section 1012.56, Florida Statutes, are amended to read:

1012.56 Educator certification requirements.—

(1) APPLICATION.—Each person seeking certification pursuant to this chapter shall submit a completed application containing the applicant's social security number to the Department of Education and remit the fee required pursuant to s. 1012.59 and rules of the State Board of Education. Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement is limited to the purpose of administration of the Title IV-D program of the Social Security Act for child support enforcement. Pursuant to s. 120.60, the department shall issue within 90 calendar days after the stamped receipted date of the completed application:

(a) If the applicant meets the requirements, a professional certificate covering the classification, level, and area for which the applicant is deemed qualified and a document explaining the requirements for renewal of the professional certificate;

(b) If the applicant meets the requirements and if requested by an employing school district or an employing private school with a professional education competence demonstration program pursuant to paragraphs (6)(f) and (8)(b), a temporary certificate covering the classification, level, and area for which the applicant is deemed qualified and an official statement of status of eligibility; or

(c) If the ~~an~~ applicant does not meet the requirements for either certificate, an official statement of status of

eligibility. The statement of status of eligibility must advise the applicant of any qualifications that must be completed to qualify for certification. Each statement of status of eligibility is valid for 3 years after its date of issuance, except as provided in paragraph (2)(d).

If the applicant is the spouse of a servicemember, as defined in s. 250.01, stationed in this state and if the applicant holds a current professional standard teaching certificate issued by another state, the department shall expedite the processing of the application and issue a certificate or statement as provided under paragraphs (a)-(c) within 60 calendar days after the stamped receipted date of the completed application.

(7) TYPES AND TERMS OF CERTIFICATION.—

(a) The Department of Education shall issue a professional certificate for a period not to exceed 5 years to any applicant who meets all the requirements outlined in subsection (2) or, for a professional certificate covering grades 6 through 12, any applicant who:

1. Meets the requirements of paragraphs (2)(a)-(h).

2. Holds a master's or higher degree in the area of science, technology, engineering, or mathematics.

3. Teaches a high school course in the subject of the advanced degree.

4. Is rated highly effective as determined by the teacher's performance evaluation under s. 1012.34, based in part on student performance as measured by a statewide, standardized assessment or an Advanced Placement, Advanced International Certificate of Education, or International Baccalaureate

examination.

5. Achieves a passing score on the Florida professional education competency examination required by state board rule.

(b) The department shall issue a temporary certificate to any applicant who completes the requirements outlined in paragraphs (2)(a)-(f) and completes the subject area content requirements specified in state board rule or demonstrates mastery of subject area knowledge pursuant to subsection (5) and holds an accredited degree or a degree approved by the Department of Education at the level required for the subject area specialization in state board rule.

(c) The department shall issue one nonrenewable 2-year temporary certificate and one nonrenewable 5-year professional certificate to a qualified applicant who holds a bachelor's degree in the area of speech-language impairment to allow for completion of a master's degree program in speech-language impairment.

Each temporary certificate is valid for 3 school fiscal years and is nonrenewable. However, the requirement in paragraph (2)(g) must be met within 1 calendar year of the date of employment under the temporary certificate. Individuals who are employed under contract at the end of the 1 calendar year time period may continue to be employed through the end of the school year in which they have been contracted. A school district shall not employ, or continue the employment of, an individual in a position for which a temporary certificate is required beyond this time period if the individual has not met the requirement of paragraph (2)(g). The State Board of Education shall adopt

rules to allow the department to extend the validity period of a temporary certificate for 2 years when the requirements for the professional certificate, not including the requirement in paragraph (2)(g), were not completed due to the serious illness or injury of the applicant, due to the fact that the applicant is the spouse of a servicemember stationed in this state, or due to other extraordinary extenuating circumstances. The department shall reissue the temporary certificate for 2 additional years upon approval by the Commissioner of Education. A written request for reissuance of the certificate shall be submitted by the district school superintendent, the governing authority of a university lab school, the governing authority of a state-supported school, or the governing authority of a private school.

Section 5. Legislative findings and intent; continuing education of veterans of the United States Armed Forces.—The Legislature finds that many veterans of the United States Armed Forces in this state have completed training and coursework during their military service, including overseas deployments, resulting in tangible and quantifiable strides in their pursuit of a postsecondary degree. The Legislature further finds that the State Board of Education and the Board of Governors of the State University System must work together to ensure that military training and coursework are granted academic credit in order to assist veterans in continuing their education. Therefore, it is the intent of the Legislature that the State Board of Education and the Board of Governors work collaboratively to:

(1) Align existing degree programs, including, but not

limited to, vocational and technical degrees, at each state university and Florida College System institution with applicable military training and experience to maximize academic credit awarded for such training and experience.

(2) Appoint and train specific faculty within each degree program at each state university and Florida College System institution as liaisons and contacts for veterans.

(3) Incorporate outreach services tailored to disabled veterans into existing disability services on the campus of each state university and Florida College System institution to make available to such veterans information on disability services provided by the United States Department of Veterans Affairs, other federal and state agencies, and private entities.

(4) Facilitate statewide meetings for personnel at state universities and Florida College System institutions who provide student services for veterans to discuss and develop best practices, exchange ideas and experiences, and attend presentations by individuals with expertise in the unique needs of veterans.

(5) Make every effort to provide veterans with sufficient courses required for graduation, including, but not limited to, giving priority registration to veterans.

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:	PCS/SB 1670 (370410)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Latvala
SUBJECT:	Juvenile Justice
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	**Favorable**
2.	Sadberry	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Sadberry	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1670 makes numerous changes that increase the use of secure detention.

Specifically, the bill:

- Creates the designation of a "prolific juvenile offender;"
- Requires that children who meet the criteria for the designation of "prolific juvenile offender" be held in detention until disposition;
- Requires the court to place a child who is adjudicated and awaiting placement in a commitment program in secure detention until the child is placed in a commitment program;
- Requires that the period for detention be tolled on the date the Department of Juvenile Justice (DJJ) alleges the child has violated a condition of his or her detention until the court enters a ruling on the violation;
- Requires a "prolific juvenile offender's" adjudicatory hearing be held within 45 days after the child is taken into custody; and
- Waives the fees the Department of Health charges for certified birth certificates for juvenile offenders in the custody of the Department of Juvenile Justice.

The bill appropriates for Fiscal Year 2017-2018 of $2,978,012 in recurring funds and $2,978,012 in nonrecurring funds from the General Revenue Fund to the Department of Juvenile Justice (DJJ).

The bill is effective October 1, 2017.

II. Present Situation:

Detention of Juveniles

The Department of Juvenile Justice (DJJ) provides detention care to supervise juveniles charged with committing a crime or who are held pursuant to a court order. There are two types of detention care, secure and nonsecure detention. Secure detention is the temporary custody of a child while under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.[1]

Nonsecure detention is the temporary, nonsecure custody of a child while the child is released to the custody of the parent, guardian, or custodian under the supervision of the DJJ staff pending adjudication, disposition, or placement. There are numerous forms of nonsecure detention; they include home detention, electronic monitoring, and nonsecure shelters.[2]

The DJJ operates 21 secure detention facilities with 1,302 beds in 21 counties. During Fiscal Year 2015-16, a total of 15,142 children were served through secure detention, 11,463 were served through home detention, and 2,803 were served through electronic monitoring. There are three county-operated detention centers in Marion, Polk, and Seminole counties.[3]

During Fiscal Year 2015-16, 2,437 children were committed to nonsecure residential commitment programs. These committed children awaiting placement in the community committed 4,308 new charges, including felonies, misdemeanors, and technical offenses. For that same period, 149 committed youth awaiting placement absconded during their time pending placement.[4]

Pre-Adjudication Detention

Section 985.255, F.S., requires a child to have a detention hearing within 24 hours of being taken into custody and placed in detention. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention.[5]

During the period of time between when a child is taken into custody and the detention hearing, the DJJ makes the determination of whether a child should be placed in detention. The DJJ must make its decision on a risk assessment of the child.[6] The child must be placed in secure detention until the detention hearing if the child:

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[1] Section 985.03(18), F.S.
[2] *Id.*
[3] Department of Juvenile Justice, *2017 Agency Bill Analysis for SB 1670*, March 10, 2017, (on file with the Senate Criminal Justice Committee).
[4] *Id.*
[5] Section 985.255(3)(a), F.S.
[6] A risk assessment must take into consideration the child's prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. Section 985.245(2), F.S.

- Is charged with possessing or discharging a firearm on school property.
- Has been taken into custody on three or more separate occasions within a 60-day period.[7]

Section 985.24, F.S., requires that all determinations and court orders regarding the use of detention care must be based upon findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court by:
  - Intentionally disrupting the administration of the court;
  - Intentionally disobeying a court order; or
  - Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or
- Requests protection from imminent bodily harm.[8]

At a detention hearing, the court must determine the need for continued detention and use the results of the DJJ's risk assessment.[9] The court may order a child to stay in detention, if the child is:

- Alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.
- Wanted in another jurisdiction for a felony offense.
- Charged with a delinquent act or violation of law and requests to be detained for protection from an imminent physical threat to his or her personal safety.
- Charged with committing an offense of domestic violence[10] and is detained.[11]
- Charged with possession of or discharging a firearm on school property or the illegal possession of a firearm.
- Charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., (drug offenses) or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.

[7] Section 985.25, F.S.
[8] Section 985.24(1), F.S.
[9] Section 985.255(3)(a), F.S., provides that a court does not have to use the DJJ's risk assessment in making its determination of detention if the child is detained because he or she is charged with a domestic violence offense, possession of or discharging a firearm on school property, or the illegal possession of a firearm.
[10] Section 741.28(2), F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. A family or household member includes: spouses; former spouses; persons related by blood or marriage; persons who are presently residing together as if a family or who have resided together in the past as if a family in the same single family dwelling unit; and persons who are parents of a child in common, regardless of whether they have been married.
[11] Section 985.255(2), F.S., allows a child to be held in secure detention if the court finds that respite care is not available and it is necessary to place the child in secure detention to protect the victim from injury.

- Charged with any second degree or third degree felony involving a violation of ch. 893, F.S., or any third degree felony that is not also a crime of violence, and the child:
  - Has a record of failure to appear at court hearings;
  - Has a record of law violations prior to court hearings;
  - Has already been detained or has been released and is awaiting final disposition of the case;
  - Has a record of violent conduct resulting in physical injury to others; or
  - Is found to have been in possession of a firearm.
- Alleged to have violated the conditions of the child's probation or conditional release supervision.
- Detained on a judicial order for failure to appear and has previously willfully failed to appear:
  - For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or
  - At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.[12]

If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court must state, in writing, clear and convincing reasons for such placement.[13]

Length of Detention

Once a detention hearing has been held and the state has filed a petition alleging a child committed a delinquent act or a violation of law, an adjudicatory hearing must be held as soon as practicable.[14] A child cannot be held in detention for more than 21 days unless an adjudicatory hearing is held.[15] The court may extend the length of the detention by nine days if more time is required for the prosecution or defense to prepare for cases involving certain serious crimes.[16] Except as stated above, after the adjudicatory hearing, a child cannot be held in detention for more than 15 days.[17]

Post-Disposition Detention

After the court finds that a child has committed a delinquent act, it must conduct a disposition hearing to determine the appropriate sanction for the child.[18] If the court places a child in a commitment program, the court must also place the child in detention care (secure or nonsecure) while awaiting placement in such commitment program.[19]

[12] Section 985.255(1), F.S.
[13] Section 985.255(3)(b), F.S.
[14] Section 985.35(1), F.S.
[15] Section 985.26(2), F.S.
[16] These serious crimes include capital felonies, life felonies, and first or second degree felonies. Section 985.26(2), F.S.
[17] Section 985.26(3), F.S.
[18] Section 985.433, F.S.
[19] Section 985.27, F.S.

If the child is awaiting placement in a nonsecure residential program he or she can only be in secure or nonsecure detention for up to five days. The DJJ may seek an extension of the five-day period to hold the child in detention care until the commitment placement is made. However, if the child is in secure detention, the continued detention cannot exceed 15 days.[20]

A child who violates his or her nonsecure detention or nonsecure detention with electronic monitoring can be placed in secure detention for five days for the first and each subsequent violation.[21]

If the placement for the child is a high- or maximum-risk residential program, the child must be held in secure detention until the placement is made.[22]

III. Effect of Proposed Changes:

Pre-Adjudication Detention

Section 3 amends s. 985.255, F.S., to add to the criteria a court may consider at a detention hearing. The bill adds the criteria of whether the child is classified as a ***prolific juvenile offender***.

A child is a ***prolific juvenile offender*** if the child:

- Is charged with a delinquent act that would be a felony if committed by an adult;
- Has been adjudicated or had adjudication withheld for a felony offense or delinquent act that would be a felony if committed by an adult, before the current charge; and
- Has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
  - An arrest event for which a disposition[23] has not been entered;
  - An adjudication; or
  - An adjudication withheld.

The term "arrest event" to mean an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction

The bill also specifies that court can only use the criteria in s. 985.255(1)-(2), F.S., and the risk assessment performed by the DJJ to determine whether a prolific juvenile offender should be held in secure detention.[24]

Under current law, a child must be placed in secure detention until the detention hearing if he or she is charged with certain offenses. **Section 2** amends s. 985.25, F.S., to include a child who is designated as a prolific juvenile offender to this list.

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[20] Section 985.27(1)(a), F.S.
[21] *Id.*
[22] Section 985.27(1)(b) and (c), F.S.
[23] The bill defines disposition to mean the entry of a nolle prosequi for the charges, a dismissal of the case, or the entry of a disposition order by the court.
[24] Section 985.255(2), F.S., allows a child who is charged with committing an offense that is also an act of domestic violence to be held in secure detention to protect the victim from injury.

Length of Detention

Section 4 amends s. 985.26, F.S., to require a prolific juvenile offender to be placed on nonsecure detention care with electronic monitoring or held in secure detention under a special detention order until the disposition of his or her case. If secure detention is ordered by the court, it may not exceed:

- 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or extended by the court; or
- 15 days after the entry of an order of adjudication.

The term "disposition" means a declination to file under s. 985.15(1)(h), F.S.; the entry of a nolle prosequi for the charges; the filing of an indictment under s. 985.56, F.S.; or an information under s. 985.557, F.S. (direct file); a dismissal of the case; or an order of final disposition by the court.

This section also establishes a tolling period for juveniles who have violated a condition of nonsecure detention until the court enters a ruling on the violation. A court retains jurisdiction over a child for a violation of a condition of nonsecure detention care during the tolling period. If the court finds that a child has violated his or her nonsecure detention care, the number of days that the child served in any type of detention before commission of the violation is excluded from the above time limits.

Section 7 amends s. 985.35, F.S., relating to adjudicatory hearings, to require a prolific juvenile offender's adjudicatory hearing be held within 45 days after the child is taken into custody, unless a delay is requested by the child.

Post-Disposition Detention

Section 6 amends s. 985.27, F.S., to require that all children who are adjudicated and awaiting placement in a nonsecure, high-risk, or maximum-risk residential commitment program be held in secure detention until placement or commitment.

Fees for Certified Birth Certificates

The Department of Health charges fees for a certified copy of a birth certificate. Currently, the department waives these fees for an inmate for is acquiring a state identification card before release.[25] **Section 1** amends s. 382.0255, F.S., to waive these fees for a juvenile offender who is in the custody of the DJJ and is receiving services under 985.461, F.S., (transition to adulthood services).

[25] Section 382.0255(3), F.S.

Other

Sections 5 and 8 amend ss. 985.265 and 985.514, F.S., respectively, to remove the reference of "secure" and "nonsecure" detention. The bill makes this change to consistently use "detention" care throughout ch. 985, F.S.

Sections 9-15 amend ss. 790.22, 985.115, 985.13, 985.245, 985.255, 985.275, and 985.319, F.S., respectively, to reenact provisions to incorporate changes made by the bill.

Section 16 of the bill provides an appropriation for Fiscal Year 2017-2018 of $2,978,012 in recurring funds and $2,978,012 in nonrecurring funds from the General Revenue Fund to the DJJ.

Section 17 of the bill provides the bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides in pertinent part that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated." Because this bill requires counties to pay more for juvenile detention costs than what was previously required, the mandate's provision of Art. VII, s. 18(a) of the Florida Constitution, appears to apply. However, the bill requires both the counties and the state to pay their respective share of the additional detention costs. Thus, the bill applies to all persons similarly situated, including the state and local governments. The bill does not include a legislative finding that the bill fulfills an important state interest.

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 provides that children who meet the criteria for the designation of prolific juvenile offender be held in detention until disposition. Based on Fiscal Year 2015-2016, the DJJ determined 371 youth would meet the definition of prolific juvenile offender. Based on this, the DJJ assumes it would serve 371 youth once and 185.5 (half) of these youth a second time, totaling 557 cases annually. The current average time to disposition for these youth is 71 days. The bill provides that the adjudicatory hearing of a prolific juvenile offender must be held within 45 days.

The DJJ estimates the total cost impact of this bill to be $5,956,025. ($2,978,013 would be recurring General Revenue (GR) and $2,978,012 nonrecurring GR for Fiscal Year 2017-2018). Following Fiscal Year 2017-2018, the nonrecurring would be replaced by Shared County Detention Trust Funds based on a 50/50 split of costs as required by statute. In accordance with s. 985.6865, F.S., the DJJ bills counties for shared detention costs based on "total shared detention costs for the prior fiscal year." As such, changes that affect detention costs in Fiscal Year 2017-2018 would not be billed to counties until Fiscal Year 2018-2019. For that reason, the DJJ would need nonrecurring GR to cover the county's portion for year one costs.[26]

The cost to the Department of Health to waive the fees for certified copies of juveniles' birth certificates is unknown at this time.

VI. Technical Deficiencies:

To address the constitutional mandates requirements, a finding that the bill fulfills an important state interest should be included in the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 382.0255, 985.25, 985.255, 985.26, 985.265, 985.27, 985.35, and 985.514.

This bill reenacts the following sections of the Florida Statutes: 790.22, 985.115, 985.13, 985.245, 985.255, 985.275, and 985.319.

[26] Email from Fred Schukecht, Chief of Staff, Department of Juvenile Justice, to Tim Sadberry, Staff Director, Senate Appropriations Subcommittee on Criminal and Civil Justice, (April 10, 2017) (on file with Senate Appropriations Subcommittee on Criminal and Civil Justice).

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 by Appropriations Subcommittee on Criminal and Civil Justice on April 13, 2017:
The committee substitute:

- Waives the fees the Department of Health charges for certified birth certificates for juvenile offenders in the custody of the DJJ.
- Allows a prolific juvenile offender to be placed on nonsecure detention with electronic monitoring or held in secure detention until the disposition of his or her case.
- Provides that an adjudicatory hearing must be held within 45 days after the child is taken into custody instead of after the petition is filed alleging that the child has committed a delinquent act.
- Removes the proposed changes to ss. 985.24 and 985.245, F.S.
- Provides an appropriation.

B. Amendments:

None.

631984

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Appropriations (Latvala) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 383 and 384
insert:

(7) ~~Notwithstanding any other provision of law,~~ An adjudication of delinquency for an offense classified as a felony shall disqualify a person from lawfully possessing a firearm until such person reaches 24 years of age, unless the person's criminal history record for that offense has been expunged pursuant to s. 943.0515(1)(b).

631984

Section 8. The Legislature determines and declares that this act fulfills an important state interest.

====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
And the directory clause is amended as follows:
Delete line 368
and insert:
Section 7. Subsections (1) and (7) of section 985.35, Florida

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete line 39
and insert:
unless such child requests a delay; revising the circumstances under which an adjudication of delinquency for a felony disqualifies a person from possessing a firearm; providing a declaration of important state interest; amending s.

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

A bill to be entitled

An act relating to juvenile justice; amending s. 382.0255, F.S.; requiring the Department of Health to waive fees for a birth certificate issued to certain juvenile offenders; amending s. 985.25, F.S.; revising terminology; requiring that a child who meets specified criteria be placed in secure detention care until the child's detention hearing; amending s. 985.255, F.S.; revising terminology; providing an additional circumstance under which the court may order continued detention; providing criteria for a child to be a prolific juvenile offender; defining the term "arrest event"; specifying certain information and criteria that may be considered by a court only when determining whether a prolific juvenile offender should be held in secure detention; conforming provisions to changes made by the act; amending s. 985.26, F.S.; revising terminology; requiring the court to place a prolific juvenile offender in certain detention care under a special detention order until disposition; specifying time limitations for secure detention for a prolific juvenile offender; defining the term "disposition"; providing for the tolling of nonsecure detention care for an alleged violation of such detention care; providing for the retention of jurisdiction by the court over a child during the tolling period; revising the calculation of detention

care days served if a child violates nonsecure detention care; amending s. 985.265, F.S.; revising terminology; amending s. 985.27, F.S.; requiring secure detention for all children awaiting placement in a residential commitment program until the placement or commitment is accomplished; deleting provisions specifying the maximum number of days a child may be placed in secure detention under certain circumstances; amending s. 985.35, F.S.; requiring the adjudicatory hearing for a child who is a prolific juvenile offender to be held within a specified period unless such child requests a delay; amending s. 985.514, F.S.; revising terminology; reenacting s. 790.22(8), F.S., relating to secure detention for minors charged with an offense involving BB guns, air or gas-operated guns, or electric weapons or devices, to incorporate the amendments made by the act to ss. 985.25, 985.255, and 985.26, F.S., in references thereto; reenacting s. 985.115(2), F.S., relating to release or delivery from custody, to incorporate the amendments made by the act to ss. 985.255 and 985.26, F.S., in references thereto; reenacting s. 985.13(2), F.S., relating to probable cause affidavits, to incorporate the amendments made by the act to ss. 985.255 and 985.26, F.S., in references thereto; reenacting s. 985.245(2)(b), F.S., relating to risk assessment instruments, to incorporate the amendment made by this act to s. 985.255, F.S., in a reference thereto; reenacting s. 985.255(2), F.S., relating to

detention criteria and hearings, to incorporate the amendment made by this act to s. 985.26, F.S., in a reference thereto; reenacting s. 985.275(1), F.S., relating to detention of an escapee or absconder, to incorporate the amendment made by this act to s. 985.255, F.S., in a reference thereto; reenacting s. 985.319(6), F.S., relating to process and service, to incorporate the amendment made by this act to s. 985.255, F.S., in a reference thereto; providing an appropriation; providing an effective date.

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

Section 1. Subsection (3) of section 382.0255, Florida Statutes, is amended to read:

382.0255 Fees.—

(3) Fees shall be established by rule. However, until rules are adopted, the fees assessed pursuant to this section shall be the minimum fees cited. The fees established by rule must be sufficient to meet the cost of providing the service. All fees shall be paid by the person requesting the record, are due and payable at the time services are requested, and are nonrefundable, except that, when a search is conducted and no vital record is found, any fees paid for additional certified copies shall be refunded. The department may waive all or part of the fees required under this section for any government entity. The department shall waive all fees required under this section for a certified copy of a birth certificate issued for purposes of an inmate acquiring a state identification card

before release pursuant to s. 944.605(7) and for a juvenile offender who is in the custody or under the supervision of the Department of Juvenile Justice and receiving services under s. 985.461.

Section 2. Subsection (1) of section 985.25, Florida Statutes, is amended to read:

985.25 Detention intake.—

(1) The department shall receive custody of a child who has been taken into custody from the law enforcement agency or court and shall review the facts in the law enforcement report or probable cause affidavit and make such further inquiry as may be necessary to determine whether detention care is appropriate.

(a) During the period of time from the taking of the child into custody to the date of the detention hearing, the initial decision as to the child's placement into ~~secure or nonsecure~~ detention care shall be made by the department under ss. 985.24 and 985.245(1).

(b) The department shall base the decision whether to place the child into ~~secure or nonsecure~~ detention care on an assessment of risk in accordance with the risk assessment instrument and procedures developed by the department under s. 985.245, except that~~. However,~~ a child shall be placed in secure detention care until the child's detention hearing if the child meets the criteria specified in s. 985.255(1)(j), is charged with possessing or discharging a firearm on school property in violation of s. 790.115, or ~~shall be placed in secure detention care. A child who~~ has been taken into custody on three or more separate occasions within a 60-day period ~~shall be placed in secure detention care until the child's detention hearing~~.

(c) If the final score on the child's risk assessment instrument indicates detention care is appropriate, but the department otherwise determines the child should be released, the department shall contact the state attorney, who may authorize release.

(d) If the final score on the risk assessment instrument indicates detention is not appropriate, the child may be released by the department in accordance with ss. 985.115 and 985.13.

Under no circumstances shall the department or the state attorney or law enforcement officer authorize the detention of any child in a jail or other facility intended or used for the detention of adults, without an order of the court.

Section 3. Subsections (1) and (3) of section 985.255, Florida Statutes, are amended to read:

985.255 Detention criteria; detention hearing.—

(1) Subject to s. 985.25(1), a child taken into custody and placed into ~~secure or nonsecure~~ detention care shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order continued detention if:

(a) The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.

(b) The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.

(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(d) The child is charged with committing an offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).

(e) The child is charged with possession of or discharging a firearm on school property in violation of s. 790.115 or the illegal possession of a firearm.

(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of chapter 893, or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.

(g) The child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child:

1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;

2. Has a record of law violations prior to court hearings;

3. Has already been detained or has been released and is awaiting final disposition of the case;

4. Has a record of violent conduct resulting in physical injury to others; or

5. Is found to have been in possession of a firearm.

(h) The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.439. If a consequence unit is not available, the child shall be placed on nonsecure detention with electronic monitoring.

(i) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:

1. For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or

2. At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

(j) The child is a prolific juvenile offender. A child is a prolific juvenile offender if the child:

1. Is charged with a delinquent act that would be a felony if committed by an adult;

2. Has been adjudicated or had adjudication withheld for a felony offense, or a delinquent act that would be a felony if committed by an adult, before the charge under subparagraph 1.;

and

3. In addition to meeting the requirements of subparagraphs 1. and 2., has five or more of any of the following, at least three of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:

a. An arrest event for which a disposition, as defined in s. 985.26, has not been entered;

b. An adjudication; or

c. An adjudication withheld.

As used in this subparagraph, the term "arrest event" means an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction.

(3)(a) The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. Unless a child is detained under paragraph (1)(d) or paragraph (1)(e), the court shall use the results of the risk assessment performed by the department and, based on the criteria in subsection (1), shall determine the need for continued detention. If a child is a prolific juvenile offender who is detained under s. 985.26(2)(c), the court shall use the results of the risk assessment performed by the department and the criteria in subsection (1) or subsection (2) only to determine whether the prolific juvenile offender should be held in secure detention.

(b) If the court orders a placement more restrictive than

indicated by the results of the risk assessment instrument, the court shall state, in writing, clear and convincing reasons for such placement.

(c) Except as provided in s. 790.22(8) or ~~in~~ s. 985.27, when a child is placed into ~~secure or nonsecure~~ detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a release date, the release date shall be requested from the court on the same date that the child is placed in detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the child in detention care shall reflect the next detention review hearing, which shall be held within 3 calendar days after the child's initial detention placement.

Section 4. Subsections (1) through (4) of section 985.26, Florida Statutes, are amended to read:

985.26 Length of detention.—

(1) A child may not be placed into or held in ~~secure or nonsecure~~ detention care for longer than 24 hours unless the court orders such detention care, and the order includes specific instructions that direct the release of the child from such detention care, in accordance with s. 985.255. The order shall be a final order, reviewable by appeal under s. 985.534

and the Florida Rules of Appellate Procedure. Appeals of such orders shall take precedence over other appeals and other pending matters.

(2)(a) Except as provided in paragraph (b) or paragraph (c), a child may not be held in ~~secure or nonsecure~~ detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.

(b) ~~However,~~ Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional 9 days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual.

(c) A prolific juvenile offender under s. 985.255(1)(j) shall be placed on nonsecure detention care with electronic monitoring or in secure detention care under a special detention order until disposition. If secure detention care is ordered by the court, it must be authorized under this part and may not exceed:

1. Twenty-one days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to paragraph (b); or

2. Fifteen days after the entry of an order of adjudication.

As used in this paragraph, the term "disposition" means a declination to file under s. 985.15(1)(h), the entry of nolle

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prosequi for the charges, the filing of an indictment under s. 985.56 or an information under s. 985.557, a dismissal of the case, or an order of final disposition by the court.

(3) Except as provided in subsection (2), a child may not be held in ~~secure or nonsecure~~ detention care for more than 15 days following the entry of an order of adjudication.

(4)(a) The time limits in subsections (2) and (3) do not include periods of delay resulting from a continuance granted by the court for cause on motion of the child or his or her counsel or of the state. Upon the issuance of an order granting a continuance for cause on a motion by either the child, the child's counsel, or the state, the court shall conduct a hearing at the end of each 72-hour period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention of the child and the need for further continuance of proceedings for the child or the state.

(b) The period for nonsecure detention care under this section is tolled on the date that the department or a law enforcement officer alleges that the child has violated a condition of the child's nonsecure detention care until the court enters a ruling on the violation. Notwithstanding the tolling of nonsecure detention care, the court retains jurisdiction over the child for a violation of a condition of nonsecure detention care during the tolling period. If the court finds that a child has violated his or her nonsecure detention care, the number of days that the child served in any type of detention care before commission of the violation shall be excluded from the time limits under subsections (2) and (3).

Section 5. Subsection (2) of section 985.265, Florida

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Statutes, is amended to read:

985.265 Detention transfer and release; education; adult jails.—

(2) If a child is on release status and not detained under this part, the child may be placed into ~~secure or nonsecure~~ detention care only pursuant to a court hearing in which the original risk assessment instrument and the newly discovered evidence or changed circumstances are introduced into evidence with a rescored risk assessment instrument.

Section 6. Section 985.27, Florida Statutes, is amended to read:

985.27 Postdisposition detention while awaiting residential commitment placement.—

~~(1)~~ The court must place all children who are adjudicated and awaiting placement in a nonsecure, high-risk, or maximum-risk residential commitment program in secure detention care until the placement or commitment is accomplished. ~~Children who are in nonsecure detention care may be placed on electronic monitoring.~~

~~(a) A child who is awaiting placement in a nonsecure residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. Any child held in secure detention during the 5 days must meet detention admission criteria under this part. The department may seek an order from the court authorizing continued detention for a specific period of time necessary for the appropriate residential placement of the child. However, such continued detention in secure detention care may not exceed 15 days after entry of the commitment order, excluding Saturdays, Sundays, and~~

~~legal holidays, and except as otherwise provided in this section. A child who is placed in nonsecure detention care or nonsecure detention care with electronic monitoring, while awaiting placement in a nonsecure residential program, may be held in secure detention care for 5 days, if the child violates the conditions of the nonsecure detention care or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.~~

~~(b) If the child is committed to a high-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.~~

~~(c) If the child is committed to a maximum-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.~~

~~(2) Regardless of detention status, a child being transported by the department to a residential commitment facility of the department may be placed in secure detention overnight, not to exceed a 24-hour period, for the specific purpose of ensuring the safe delivery of the child to his or her residential commitment program, court, appointment, transfer, or release.~~

Section 7. Subsection (1) of section 985.35, Florida Statutes, is amended to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

(1)(a) Except as provided in paragraph (b), the adjudicatory hearing must be held as soon as practicable after the petition alleging that a child has committed a delinquent act or violation of law is filed and in accordance with the

Florida Rules of Juvenile Procedure; but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted. If the child is being detained, the time limitations in s. 985.26(2) and (3) apply.

(b) If the child is a prolific juvenile offender under s. 985.255(1)(j), the adjudicatory hearing must be held within 45 days after the child is taken into custody unless a delay is requested by the child.

Section 8. Subsection (1) of section 985.514, Florida Statutes, is amended to read:

985.514 Responsibility for cost of care; fees.—

(1) When any child is placed into ~~secure or nonsecure~~ detention care or into other placement for the purpose of being supervised by the department pursuant to a court order following a detention hearing, the court shall order the child's parents to pay fees to the department as provided in s. 985.039.

Section 9. For the purpose of incorporating the amendments made by this act to sections 985.25, 985.255, and 985.26, Florida Statutes, in references thereto, subsection (8) of section 790.22, Florida Statutes, is reenacted to read:

790.22 Use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.—

(8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor is charged with an offense that involves the use or possession of a firearm, including a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of

the minor, and shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 985.26(1)-(5), if the court finds that the minor meets the criteria specified in s. 985.255, or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. The Department of Juvenile Justice shall prepare a form for all minors charged under this subsection which states the period of detention and the relevant demographic information, including, but not limited to, the gender, age, and race of the minor; whether or not the minor was represented by private counsel or a public defender; the current offense; and the minor's complete prior record, including any pending cases. The form shall be provided to the judge for determining whether the minor should be continued in secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or herself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department.

Section 10. For the purpose of incorporating the amendments made by this act to sections 985.255 and 985.26, Florida Statutes, in references thereto, subsection (2) of section 985.115, Florida Statutes, is reenacted to read:

985.115 Release or delivery from custody.—

(2) Unless otherwise ordered by the court under s. 985.255

or s. 985.26, and unless there is a need to hold the child, a person taking a child into custody shall attempt to release the child as follows:

(a) To the child's parent, guardian, or legal custodian or, if the child's parent, guardian, or legal custodian is unavailable, unwilling, or unable to provide supervision for the child, to any responsible adult. Prior to releasing the child to a responsible adult, other than the parent, guardian, or legal custodian, the person taking the child into custody may conduct a criminal history background check of the person to whom the child is to be released. If the person has a prior felony conviction, or a conviction for child abuse, drug trafficking, or prostitution, that person is not a responsible adult for the purposes of this section. The person to whom the child is released shall agree to inform the department or the person releasing the child of the child's subsequent change of address and to produce the child in court at such time as the court may direct, and the child shall join in the agreement.

(b) Contingent upon specific appropriation, to a shelter approved by the department or to an authorized agent.

(c) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, to a law enforcement officer who shall deliver the child to a hospital for necessary evaluation and treatment.

(d) If the child is believed to be mentally ill as defined in s. 394.463(1), to a law enforcement officer who shall take the child to a designated public receiving facility as defined in s. 394.455 for examination under s. 394.463.

(e) If the child appears to be intoxicated and has

threatened, attempted, or inflicted physical harm on himself or herself or another, or is incapacitated by substance abuse, to a law enforcement officer who shall deliver the child to a hospital, addictions receiving facility, or treatment resource.

(f) If available, to a juvenile assessment center equipped and staffed to assume custody of the child for the purpose of assessing the needs of the child in custody. The center may then release or deliver the child under this section with a copy of the assessment.

Section 11. For the purpose of incorporating the amendments made by this act to sections 985.255 and 985.26, Florida Statutes, in references thereto, subsection (2) of section 985.13, Florida Statutes, is reenacted to read:

985.13 Probable cause affidavits.—

(2) A person taking a child into custody who determines, under part V, that the child should be detained or released to a shelter designated by the department, shall make a reasonable effort to immediately notify the parent, guardian, or legal custodian of the child and shall, without unreasonable delay, deliver the child to the appropriate juvenile probation officer or, if the court has so ordered under s. 985.255 or s. 985.26, to a detention center or facility. Upon delivery of the child, the person taking the child into custody shall make a written report or probable cause affidavit to the appropriate juvenile probation officer. Such written report or probable cause affidavit must:

(a) Identify the child and, if known, the parents, guardian, or legal custodian.

(b) Establish that the child was legally taken into

custody, with sufficient information to establish the jurisdiction of the court and to make a prima facie showing that the child has committed a violation of law.

Section 12. For the purpose of incorporating the amendment made by this act to section 985.255, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 985.245, Florida Statutes, is reenacted to read:

985.245 Risk assessment instrument.—

(2)

(b) The risk assessment instrument shall take into consideration, but need not be limited to, prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. The risk assessment instrument shall also take into consideration appropriate aggravating and mitigating circumstances, and shall be designed to target a narrower population of children than s. 985.255. The risk assessment instrument shall also include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted, and, if detention care is warranted, whether the child should be placed into secure or nonsecure detention care.

Section 13. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, subsection (2) of section 985.255, Florida Statutes, is reenacted to read:

985.255 Detention criteria; detention hearing.—

(2) A child who is charged with committing an offense that is classified as an act of domestic violence as defined in s. 741.28 and whose risk assessment instrument indicates secure detention is not appropriate may be held in secure detention if the court makes specific written findings that:

(a) Respite care for the child is not available.

(b) It is necessary to place the child in secure detention in order to protect the victim from injury.

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in this section or s. 985.26.

Section 14. For the purpose of incorporating the amendment made by this act to section 985.255, Florida Statutes, in a reference thereto, subsection (1) of section 985.275, Florida Statutes, is reenacted to read:

985.275 Detention of escapee or absconder on authority of the department.—

(1) If an authorized agent of the department has reasonable grounds to believe that any delinquent child committed to the department has escaped from a residential commitment facility or from being lawfully transported thereto or therefrom, or has absconded from a nonresidential commitment facility, the agent

shall notify law enforcement and, if the offense would require notification under chapter 960, notify the victim. The agent shall make every reasonable effort as permitted within existing resources provided to the department to locate the delinquent child, and the child may be returned to the facility or, if it is closer, to a detention center for return to the facility. However, a child may not be held in detention longer than 24 hours, excluding Saturdays, Sundays, and legal holidays, unless a special order so directing is made by the judge after a detention hearing resulting in a finding that detention is required based on the criteria in s. 985.255. The order shall state the reasons for such finding. The reasons shall be reviewable by appeal or in habeas corpus proceedings in the district court of appeal.

Section 15. For the purpose of incorporating the amendment made by this act to section 985.255, Florida Statutes, in a reference thereto, subsection (6) of section 985.319, Florida Statutes, is reenacted to read:

985.319 Process and service.—

(6) If the petition alleges that the child has committed a delinquent act or violation of law and the judge deems it advisable to do so, under the criteria of s. 985.255, the judge may, by endorsement upon the summons and after the entry of an order in which valid reasons are specified, order the child to be taken into custody immediately, and in such case the person serving the summons shall immediately take the child into custody.

Section 16. For the 2017-2018 fiscal year, the sums of $2,978,012 in recurring funds and $2,978,012 in nonrecurring

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funds from the General Revenue Fund are appropriated to the Department of Juvenile Justice for the purpose of implementing this act.

Section 17. 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/SB 1670
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Latvala
SUBJECT:	Juvenile Justice
DATE:	April 25, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	**Favorable**
2.	Sadberry	Sadberry	ACJ	**Recommend: Fav/CS**
3.	Sadberry	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1670 makes numerous changes that increase the use of secure detention.

Specifically, the bill:

- Creates the designation of a "prolific juvenile offender;"
- Requires that children who meet the criteria for the designation of "prolific juvenile offender" be held in detention until disposition;
- Requires the court to place a child who is adjudicated and awaiting placement in a commitment program in secure detention until the child is placed in a commitment program;
- Requires that the period for detention be tolled on the date the Department of Juvenile Justice (DJJ) alleges the child has violated a condition of his or her detention until the court enters a ruling on the violation;
- Requires a "prolific juvenile offender's" adjudicatory hearing be held within 45 days after the child is taken into custody;
- Waives the fees the Department of Health charges for certified birth certificates for juvenile offenders in the custody of the Department of Juvenile Justice;
- Creates an exception to allow a person who has an adjudication of delinquency for a felony offense and has his or her criminal history record expunged pursuant to s. 943.0515(1)(b), F.S., to qualify to lawfully possess a firearm; and
- Specifies that the bill fulfills an important state interest.

The bill appropriates for Fiscal Year 2017-2018 of $2,978,012 in recurring funds and $2,978,012 in nonrecurring funds from the General Revenue Fund to the Department of Juvenile Justice (DJJ).

The bill is effective October 1, 2017.

II. Present Situation:

Detention of Juveniles

The Department of Juvenile Justice (DJJ) provides detention care to supervise juveniles charged with committing a crime or who are held pursuant to a court order. There are two types of detention care, secure and nonsecure detention. Secure detention is the temporary custody of a child while under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.[1]

Nonsecure detention is the temporary, nonsecure custody of a child while the child is released to the custody of the parent, guardian, or custodian under the supervision of the DJJ staff pending adjudication, disposition, or placement. There are numerous forms of nonsecure detention; they include home detention, electronic monitoring, and nonsecure shelters.[2]

The DJJ operates 21 secure detention facilities with 1,302 beds in 21 counties. During Fiscal Year 2015-16, a total of 15,142 children were served through secure detention, 11,463 were served through home detention, and 2,803 were served through electronic monitoring. There are three county-operated detention centers in Marion, Polk, and Seminole counties.[3]

During Fiscal Year 2015-16, 2,437 children were committed to nonsecure residential commitment programs. These committed children awaiting placement in the community committed 4,308 new charges, including felonies, misdemeanors, and technical offenses. For that same period, 149 committed youth awaiting placement absconded during their time pending placement.[4]

Pre-Adjudication Detention

Section 985.255, F.S., requires a child to have a detention hearing within 24 hours of being taken into custody and placed in detention. The purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention.[5]

During the period of time between when a child is taken into custody and the detention hearing, the DJJ makes the determination of whether a child should be placed in detention. The DJJ must

[1] Section 985.03(18), F.S.
[2] *Id.*
[3] Department of Juvenile Justice, *2017 Agency Bill Analysis for SB 1670*, March 10, 2017, (on file with the Senate Criminal Justice Committee).
[4] *Id.*
[5] Section 985.255(3)(a), F.S.

make its decision on a risk assessment of the child.[6] The child must be placed in secure detention until the detention hearing if the child:

- Is charged with possessing or discharging a firearm on school property.
- Has been taken into custody on three or more separate occasions within a 60-day period.[7]

Section 985.24, F.S., requires that all determinations and court orders regarding the use of detention care must be based upon findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court by:
  - Intentionally disrupting the administration of the court;
  - Intentionally disobeying a court order; or
  - Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or
- Requests protection from imminent bodily harm.[8]

At a detention hearing, the court must determine the need for continued detention and use the results of the DJJ's risk assessment.[9] The court may order a child to stay in detention, if the child is:

- Alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.
- Wanted in another jurisdiction for a felony offense.
- Charged with a delinquent act or violation of law and requests to be detained for protection from an imminent physical threat to his or her personal safety.
- Charged with committing an offense of domestic violence[10] and is detained.[11]
- Charged with possession of or discharging a firearm on school property or the illegal possession of a firearm.

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[6] A risk assessment must take into consideration the child's prior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. Section 985.245(2), F.S.

[7] Section 985.25, F.S.

[8] Section 985.24(1), F.S.

[9] Section 985.255(3)(a), F.S., provides that a court does not have to use the DJJ's risk assessment in making its determination of detention if the child is detained because he or she is charged with a domestic violence offense, possession of or discharging a firearm on school property, or the illegal possession of a firearm.

[10] Section 741.28(2), F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. A family or household member includes: spouses; former spouses; persons related by blood or marriage; persons who are presently residing together as if a family or who have resided together in the past as if a family in the same single family dwelling unit; and persons who are parents of a child in common, regardless of whether they have been married.

[11] Section 985.255(2), F.S., allows a child to be held in secure detention if the court finds that respite care is not available and it is necessary to place the child in secure detention to protect the victim from injury.

- Charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., (drug offenses) or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.
- Charged with any second degree or third degree felony involving a violation of ch. 893, F.S., or any third degree felony that is not also a crime of violence, and the child:
  - Has a record of failure to appear at court hearings;
  - Has a record of law violations prior to court hearings;
  - Has already been detained or has been released and is awaiting final disposition of the case;
  - Has a record of violent conduct resulting in physical injury to others; or
  - Is found to have been in possession of a firearm.
- Alleged to have violated the conditions of the child's probation or conditional release supervision.
- Detained on a judicial order for failure to appear and has previously willfully failed to appear:
  - For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or
  - At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.[12]

If the court orders a placement more restrictive than indicated by the results of the risk assessment instrument, the court must state, in writing, clear and convincing reasons for such placement.[13]

Length of Detention

Once a detention hearing has been held and the state has filed a petition alleging a child committed a delinquent act or a violation of law, an adjudicatory hearing must be held as soon as practicable.[14] A child cannot be held in detention for more than 21 days unless an adjudicatory hearing is held.[15] The court may extend the length of the detention by nine days if more time is required for the prosecution or defense to prepare for cases involving certain serious crimes.[16] Except as stated above, after the adjudicatory hearing, a child cannot be held in detention for more than 15 days.[17]

Post-Disposition Detention

After the court finds that a child has committed a delinquent act, it must conduct a disposition hearing to determine the appropriate sanction for the child.[18] If the court places a child in a

[12] Section 985.255(1), F.S.
[13] Section 985.255(3)(b), F.S.
[14] Section 985.35(1), F.S.
[15] Section 985.26(2), F.S.
[16] These serious crimes include capital felonies, life felonies, and first or second degree felonies. Section 985.26(2), F.S.
[17] Section 985.26(3), F.S.
[18] Section 985.433, F.S.

commitment program, the court must also place the child in detention care (secure or nonsecure) while awaiting placement in such commitment program.[19]

If the child is awaiting placement in a nonsecure residential program he or she can only be in secure or nonsecure detention for up to five days. The DJJ may seek an extension of the five-day period to hold the child in detention care until the commitment placement is made. However, if the child is in secure detention, the continued detention cannot exceed 15 days.[20]

A child who violates his or her nonsecure detention or nonsecure detention with electronic monitoring can be placed in secure detention for five days for the first and each subsequent violation.[21]

If the placement for the child is a high- or maximum-risk residential program, the child must be held in secure detention until the placement is made.[22]

III. Effect of Proposed Changes:

Pre-Adjudication Detention

Section 3 amends s. 985.255, F.S., to add to the criteria a court may consider at a detention hearing. The bill adds the criteria of whether the child is classified as a ***prolific juvenile offender***.

A child is a ***prolific juvenile offender*** if the child:

- Is charged with a delinquent act that would be a felony if committed by an adult;
- Has been adjudicated or had adjudication withheld for a felony offense or delinquent act that would be a felony if committed by an adult, before the current charge; and
- Has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
  - An arrest event for which a disposition[23] has not been entered;
  - An adjudication; or
  - An adjudication withheld.

The term "arrest event" to mean an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction

The bill also specifies that court can only use the criteria in s. 985.255(1)-(2), F.S., and the risk assessment performed by the DJJ to determine whether a prolific juvenile offender should be held in secure detention.[24]

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[19] Section 985.27, F.S.
[20] Section 985.27(1)(a), F.S.
[21] *Id.*
[22] Section 985.27(1)(b) and (c), F.S.
[23] The bill defines disposition to mean the entry of a nolle prosequi for the charges, a dismissal of the case, or the entry of a disposition order by the court.
[24] Section 985.255(2), F.S., allows a child who is charged with committing an offense that is also an act of domestic violence to be held in secure detention to protect the victim from injury.

Under current law, a child must be placed in secure detention until the detention hearing if he or she is charged with certain offenses. **Section 2** amends s. 985.25, F.S., to include a child who is designated as a prolific juvenile offender to this list.

Length of Detention

Section 4 amends s. 985.26, F.S., to require a prolific juvenile offender to be placed on nonsecure detention care with electronic monitoring or held in secure detention under a special detention order until the disposition of his or her case. If secure detention is ordered by the court, it may not exceed:

- 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or extended by the court; or
- 15 days after the entry of an order of adjudication.

The term "disposition" means a declination to file under s. 985.15(1)(h), F.S.; the entry of a nolle prosequi for the charges; the filing of an indictment under s. 985.56, F.S.; or an information under s. 985.557, F.S. (direct file); a dismissal of the case; or an order of final disposition by the court.

This section also establishes a tolling period for juveniles who have violated a condition of nonsecure detention until the court enters a ruling on the violation. A court retains jurisdiction over a child for a violation of a condition of nonsecure detention care during the tolling period. If the court finds that a child has violated his or her nonsecure detention care, the number of days that the child served in any type of detention before commission of the violation is excluded from the above time limits.

Section 7 amends s. 985.35, F.S., relating to adjudicatory hearings, to require a prolific juvenile offender's adjudicatory hearing be held within 45 days after the child is taken into custody, unless a delay is requested by the child. Currently, a person who has an adjudication of delinquency for a felony offense is disqualified from lawfully possessing a firearm until he or she is 24 years old. The bill creates an exception to this disqualification, allowing a person who has his or her criminal history record expunged pursuant to s. 943.0515(1)(b), F.S., to qualify to lawfully possess a firearm.

Post-Disposition Detention

Section 6 amends s. 985.27, F.S., to require that all children who are adjudicated and awaiting placement in a nonsecure, high-risk, or maximum-risk residential commitment program be held in secure detention until placement or commitment.

Fees for Certified Birth Certificates

The Department of Health charges fees for a certified copy of a birth certificate. Currently, the department waives these fees for an inmate for is acquiring a state identification card before

release.[25] **Section 1** amends s. 382.0255, F.S., to waive these fees for a juvenile offender who is in the custody of the DJJ and is receiving services under 985.461, F.S., (transition to adulthood services).

Other

Sections 5 and 9 amend ss. 985.265 and 985.514, F.S., respectively, to remove the reference of "secure" and "nonsecure" detention. The bill makes this change to consistently use "detention" care throughout ch. 985, F.S.

Section 8 provides the Legislature determines and declares that is act fulfills an important state interest.

Sections 10-15 amend ss. 790.22, 985.115, 985.13, 985.245, 985.255, 985.275, and 985.319, F.S., respectively, to reenact provisions to incorporate changes made by the bill.

Section 17 of the bill provides an appropriation for Fiscal Year 2017-2018 of $2,978,012 in recurring funds and $2,978,012 in nonrecurring funds from the General Revenue Fund to the DJJ.

Section 18 of the bill provides the bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated." Because this bill requires counties to pay more for juvenile detention costs than what was previously required, the mandate's provision of Art. VII, s. 18(a) of the Florida Constitution, appears to apply. However, the bill requires both the counties and the state to pay their respective share of the additional detention costs. Thus, the bill applies to all persons similarly situated, including the state and local governments. The bill includes a legislative finding that the bill fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[25] Section 382.0255(3), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides that children who meet the criteria for the designation of prolific juvenile offender be held in detention until disposition. Based on Fiscal Year 2015-2016, the DJJ determined 371 youth would meet the definition of prolific juvenile offender. Based on this, the DJJ assumes it would serve 371 youth once and 185.5 (half) of these youth a second time, totaling 557 cases annually. The current average time to disposition for these youth is 71 days. The bill provides that the adjudicatory hearing of a prolific juvenile offender must be held within 45 days.

The DJJ estimates the total cost impact of this bill to be $5,956,025. ($2,978,013 would be recurring General Revenue (GR) and $2,978,012 nonrecurring GR for Fiscal Year 2017-2018). Following Fiscal Year 2017-2018, the nonrecurring would be replaced by Shared County Detention Trust Funds based on a 50/50 split of costs as required by statute. In accordance with s. 985.6865, F.S., the DJJ bills counties for shared detention costs based on "total shared detention costs for the prior fiscal year." As such, changes that affect detention costs in Fiscal Year 2017-2018 would not be billed to counties until Fiscal Year 2018-2019. For that reason, the DJJ would need nonrecurring GR to cover the county's portion for year one costs.[26]

The cost to the Department of Health to waive the fees for certified copies of juveniles' birth certificates is unknown at this time.

VI. Technical Deficiencies:

To address the constitutional mandates requirements, a finding that the bill fulfills an important state interest should be included in the bill.

VII. Related Issues:

None.

[26] Email from Fred Schukecht, Chief of Staff, Department of Juvenile Justice, to Tim Sadberry, Staff Director, Senate Appropriations Subcommittee on Criminal and Civil Justice, (April 10, 2017) (on file with Senate Appropriations Subcommittee on Criminal and Civil Justice).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 382.0255, 985.25, 985.255, 985.26, 985.265, 985.27, 985.35, and 985.514.

This bill reenacts the following sections of the Florida Statutes: 790.22, 985.115, 985.13, 985.245, 985.255, 985.275, and 985.319.

IX. Additional Information:

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

CS by Appropriations on April 25, 2017:
The committee substitute:

- Waives the fees the Department of Health charges for certified birth certificates for juvenile offenders in the custody of the DJJ.
- Allows a prolific juvenile offender to be placed on nonsecure detention with electronic monitoring or held in secure detention until the disposition of his or her case.
- Provides that an adjudicatory hearing must be held within 45 days after the child is taken into custody instead of after the petition is filed alleging that the child has committed a delinquent act.
- Removes the proposed changes to ss. 985.24 and 985.245, F.S.
- Creates an exception to allow a person who has an adjudication of delinquency for a felony offense and has his or her criminal history record expunged pursuant to s. 943.0515(1)(b), F.S., to qualify to lawfully possess a firearm.
- Specifies that the bill fulfills an important state interest.
- Provides an appropriation.

B. Amendments:

None.

By Senator Latvala

16-00721B-17 20171670__

A bill to be entitled

An act relating to juvenile justice; amending s. 985.24, F.S.; revising requirements for placement of a child in detention care; revising terminology; amending s. 985.245, F.S.; providing that a child who is designated a prolific juvenile offender does not require a risk assessment to be placed in detention care; amending s. 985.25, F.S.; revising terminology; providing that a child meeting specified criteria shall be placed in secure detention care until the child's detention hearing; amending s. 985.255, F.S.; revising terminology; providing criteria for a child to be designated a prolific juvenile offender; defining the term "arrest event"; conforming provisions to changes made by the act; amending s. 985.26, F.S.; revising terminology; requiring the court to place a prolific juvenile offender in secure detention care under a special detention order until disposition; defining the term "disposition"; revising terminology; providing for the tolling of the period of detention care for an alleged violation of detention care conditions; providing for the retention of jurisdiction by the court over a child during the tolling period; revising the calculation of detention days served if a child violates detention care; amending s. 985.265, F.S.; revising terminology; amending s. 985.27, F.S.; requiring secure detention for all children awaiting placement in a commitment program until the placement or commitment is

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accomplished; deleting provisions relating to the detention of children; amending s. 985.35, F.S.; requiring the adjudicatory hearing for a child designated a prolific juvenile offender to be held within a specified period unless such child requests a delay; amending s. 985.514, F.S.; revising terminology; reenacting s. 790.22(8), F.S., relating to secure detention for minors charged with an offense involving firearms, to incorporate the amendments made by the act to ss. 985.24, 985.25, 985.255, and 985.26, F.S., in references thereto; reenacting s. 985.115(2), F.S., relating to release or delivery from custody, to incorporate the amendments made by the act to ss. 985.255 and 985.26, F.S., in references thereto; reenacting s. 985.13(2), F.S., relating to probable cause affidavits, to incorporate the amendments made by the act to ss. 985.255 and 985.26, F.S., in references thereto; reenacting s. 985.245(2)(b), F.S., relating to risk assessment instruments, to incorporate the amendment made by this act to s. 985.255, F.S., in a reference thereto; reenacting s. 985.255(2), F.S., relating to detention criteria and hearings, to incorporate the amendment made by this act to s. 985.26, F.S., in a reference thereto; reenacting s. 985.275(1), F.S., relating to detention of an escapee or absconder, to incorporate the amendment made by this act to s. 985.255, F.S., in a reference thereto; reenacting s. 985.319(6), F.S., relating to process and service, to incorporate the

amendment made by this act to s. 985.255, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraphs (d) and (e) of subsection (1) and subsection (2) of section 985.24, Florida Statutes, are amended, and paragraph (f) is added to subsection (1) of that section, to read:

985.24 Use of detention; prohibitions.—

(1) All determinations and court orders regarding the use of detention care shall be based primarily upon findings that the child:

(d) Has committed contempt of court by:

1. Intentionally disrupting the administration of the court;

2. Intentionally disobeying a court order; or

3. Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; ~~or~~

(e) Requests protection from imminent bodily harm; or

(f) Is at risk for recidivism.

(2) A child alleged to have committed a delinquent act or violation of law may not be placed into ~~secure or nonsecure~~ detention care for any of the following reasons:

(a) To allow a parent to avoid his or her legal responsibility.

(b) To permit more convenient administrative access to the child.

(c) To facilitate further interrogation or investigation.

(d) Due to a lack of more appropriate facilities.

Section 2. Subsection (1) of section 985.245, Florida Statutes, is amended to read:

985.245 Risk assessment instrument.—

(1) All determinations and court orders regarding placement of a child into detention care shall comply with all requirements and criteria provided in this part and shall be based on a risk assessment of the child, unless the child is placed into detention care under ~~as provided in~~ s. 985.255(2) or is designated a prolific juvenile offender under s. 985.255(1)(j).

Section 3. Subsection (1) of section 985.25, Florida Statutes, is amended to read:

985.25 Detention intake.—

(1) The department shall receive custody of a child who has been taken into custody from the law enforcement agency or court and shall review the facts in the law enforcement report or probable cause affidavit and make such further inquiry as may be necessary to determine whether detention care is appropriate.

(a) During the period of time from the taking of the child into custody to the date of the detention hearing, the initial decision as to the child's placement into ~~secure or nonsecure~~ detention care shall be made by the department under ss. 985.24 and 985.245(1).

(b) The department shall base the decision whether to place the child into ~~secure or nonsecure~~ detention care on an assessment of risk in accordance with the risk assessment instrument and procedures developed by the department under s.

985.245, except that~~. However,~~ a child shall be placed in secure detention care until the child's detention hearing if the child meets the criteria specified in s. 985.255(1)(j), is charged with possessing or discharging a firearm on school property in violation of s. 790.115, or ~~shall be placed in secure detention care. A child who~~ has been taken into custody on three or more separate occasions within a 60-day period ~~shall be placed in secure detention care until the child's detention hearing~~.

(c) If the final score on the child's risk assessment instrument indicates detention care is appropriate, but the department otherwise determines the child should be released, the department shall contact the state attorney, who may authorize release.

(d) If the final score on the risk assessment instrument indicates detention is not appropriate, the child may be released by the department in accordance with ss. 985.115 and 985.13.

Under no circumstances shall the department or the state attorney or law enforcement officer authorize the detention of any child in a jail or other facility intended or used for the detention of adults, without an order of the court.

Section 4. Subsection (1) and paragraphs (a) and (c) of subsection (3) of section 985.255, Florida Statutes, are amended to read:

985.255 Detention criteria; detention hearing.—

(1) Subject to s. 985.25(1), a child taken into custody and placed into ~~secure or nonsecure~~ detention care shall be given a hearing within 24 hours after being taken into custody. At the

hearing, the court may order continued detention if:

(a) The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.

(b) The child is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony.

(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

(d) The child is charged with committing an offense of domestic violence as defined in s. 741.28 and is detained as provided in subsection (2).

(e) The child is charged with possession of or discharging a firearm on school property in violation of s. 790.115 or the illegal possession of a firearm.

(f) The child is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of chapter 893, or a felony of the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm.

(g) The child is charged with any second degree or third degree felony involving a violation of chapter 893 or any third degree felony that is not also a crime of violence, and the child:

1. Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;

2. Has a record of law violations prior to court hearings;

3. Has already been detained or has been released and is awaiting final disposition of the case;

4. Has a record of violent conduct resulting in physical injury to others; or

5. Is found to have been in possession of a firearm.

(h) The child is alleged to have violated the conditions of the child's probation or conditional release supervision. However, a child detained under this paragraph may be held only in a consequence unit as provided in s. 985.439. If a consequence unit is not available, the child shall be placed on nonsecure detention with electronic monitoring.

(i) The child is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:

1. For an adjudicatory hearing on the same case regardless of the results of the risk assessment instrument; or

2. At two or more court hearings of any nature on the same case regardless of the results of the risk assessment instrument.

A child may be held in secure detention for up to 72 hours in advance of the next scheduled court hearing pursuant to this paragraph. The child's failure to keep the clerk of court and defense counsel informed of a current and valid mailing address where the child will receive notice to appear at court

proceedings does not provide an adequate ground for excusal of the child's nonappearance at the hearings.

(j) The child is a prolific juvenile offender. A child must be designated by the court as a prolific juvenile offender if the child:

1. Is charged with a delinquent act that would be a felony if committed by an adult;

2. Has been adjudicated or had adjudication withheld for a felony offense or delinquent act that would be a felony if committed by an adult, before the charge under subparagraph 1.; and

3. Has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:

a. An arrest event for which a disposition, as defined in s. 985.26, has not been entered;

b. An adjudication; or

c. An adjudication withheld.

This subparagraph excludes the arrest event that resulted in the charge under subparagraph 1. and the adjudication or adjudication withheld under subparagraph 2. As used in this subparagraph, the term "arrest event" means an arrest for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction.

(3)(a) The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued

detention. Unless a child is detained under paragraph (1)(d), ~~or~~ paragraph (1)(e), or paragraph (1)(j), the court shall use the results of the risk assessment performed by the department and, based on the criteria in subsection (1), shall determine the need for continued detention.

(c) Except as provided in s. 790.22(8), s. 985.26(2)(b), or ~~in~~ s. 985.27, when a child is placed into ~~secure or nonsecure~~ detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a release date, the release date shall be requested from the court on the same date that the child is placed in detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the child in detention care shall reflect the next detention review hearing, which shall be held within 3 calendar days after the child's initial detention placement.

Section 5. Subsections (1) through (4) of section 985.26, Florida Statutes, are amended to read:

985.26 Length of detention.—

(1) A child may not be placed into or held in ~~secure or nonsecure~~ detention care for longer than 24 hours unless the court orders such detention care, and the order includes specific instructions that direct the release of the child from

such detention care, in accordance with s. 985.255. The order shall be a final order, reviewable by appeal under s. 985.534 and the Florida Rules of Appellate Procedure. Appeals of such orders shall take precedence over other appeals and other pending matters.

(2)(a) Except as provided in paragraph (b), a child may not be held in ~~secure or nonsecure~~ detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court. However, upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional 9 days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual.

(b) A child who is designated a prolific juvenile offender under s. 985.255(1)(j) shall be held in secure detention care under a special detention order until disposition. As used in this paragraph, the term "disposition" means the entry of a nolle prosequi for the charges, a dismissal of the case, or the entry of a disposition order by the court.

(3) Except as provided in subsection (2), a child may not be held in ~~secure or nonsecure~~ detention care for more than 15 days following the entry of an order of adjudication.

(4)(a) The time limits in subsections (2) and (3) do not include periods of delay resulting from a continuance granted by the court for cause on motion of the child or his or her counsel or of the state. Upon the issuance of an order granting a

continuance for cause on a motion by either the child, the child's counsel, or the state, the court shall conduct a hearing at the end of each 72-hour period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention of the child and the need for further continuance of proceedings for the child or the state.

(b) The period for detention care under this section is tolled on the date that the department alleges that the child has violated a condition of the child's detention care until the court enters a ruling on the violation. Notwithstanding the tolling of detention care, the court retains jurisdiction over the child for a violation of a condition of detention care during the tolling period. If the court finds that a child has violated his or her detention care, the number of days that the child served in detention care before commission of the violation shall be excluded from the time limits under subsections (2) and (3).

Section 6. Subsection (2) of section 985.265, Florida Statutes, is amended to read:

985.265 Detention transfer and release; education; adult jails.—

(2) If a child is on release status and not detained under this part, the child may be placed into ~~secure or nonsecure~~ detention care only pursuant to a court hearing in which the original risk assessment instrument and the newly discovered evidence or changed circumstances are introduced into evidence with a rescored risk assessment instrument.

Section 7. Section 985.27, Florida Statutes, is amended to read:

985.27 Postdisposition detention while awaiting commitment placement.—

~~(1)~~ The court must place all children who are adjudicated and awaiting placement in a commitment program in secure detention care until the placement or commitment is accomplished. ~~Children who are in nonsecure detention care may be placed on electronic monitoring.~~

~~(a) A child who is awaiting placement in a nonsecure residential program must be removed from detention within 5 days, excluding Saturdays, Sundays, and legal holidays. Any child held in secure detention during the 5 days must meet detention admission criteria under this part. The department may seek an order from the court authorizing continued detention for a specific period of time necessary for the appropriate residential placement of the child. However, such continued detention in secure detention care may not exceed 15 days after entry of the commitment order, excluding Saturdays, Sundays, and legal holidays, and except as otherwise provided in this section. A child who is placed in nonsecure detention care or nonsecure detention care with electronic monitoring, while awaiting placement in a nonsecure residential program, may be held in secure detention care for 5 days, if the child violates the conditions of the nonsecure detention care or the electronic monitoring agreement. For any subsequent violation, the court may impose an additional 5 days in secure detention care.~~

~~(b) If the child is committed to a high-risk residential program, the child must be held in secure detention care until placement or commitment is accomplished.~~

~~(c) If the child is committed to a maximum-risk residential~~

~~program, the child must be held in secure detention care until placement or commitment is accomplished.~~

~~(2) Regardless of detention status, a child being transported by the department to a residential commitment facility of the department may be placed in secure detention overnight, not to exceed a 24-hour period, for the specific purpose of ensuring the safe delivery of the child to his or her residential commitment program, court, appointment, transfer, or release.~~

Section 8. Subsection (1) of section 985.35, Florida Statutes, is amended to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

(1)(a) Except as provided in paragraph (b), the adjudicatory hearing must be held as soon as practicable after the petition alleging that a child has committed a delinquent act or violation of law is filed and in accordance with the Florida Rules of Juvenile Procedure; but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted. If the child is being detained, the time limitations in s. 985.26(2) and (3) apply.

(b) If the child is designated a prolific juvenile offender under s. 985.255(1)(j), the adjudicatory hearing must be held within 45 days after the petition alleging that the child has committed a delinquent act or violation of law has been filed unless a delay is requested by the child.

Section 9. Subsection (1) of section 985.514, Florida Statutes, is amended to read:

985.514 Responsibility for cost of care; fees.—

(1) When any child is placed into ~~secure or nonsecure~~ detention care or into other placement for the purpose of being supervised by the department pursuant to a court order following a detention hearing, the court shall order the child's parents to pay fees to the department as provided in s. 985.039.

Section 10. For the purpose of incorporating the amendments made by this act to sections 985.24, 985.25, 985.255, and 985.26, Florida Statutes, in references thereto, subsection (8) of section 790.22, Florida Statutes, is reenacted to read:

790.22 Use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.—

(8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor is charged with an offense that involves the use or possession of a firearm, including a violation of subsection (3), or is charged for any offense during the commission of which the minor possessed a firearm, the minor shall be detained in secure detention, unless the state attorney authorizes the release of the minor, and shall be given a hearing within 24 hours after being taken into custody. At the hearing, the court may order that the minor continue to be held in secure detention in accordance with the applicable time periods specified in s. 985.26(1)-(5), if the court finds that the minor meets the criteria specified in s. 985.255, or if the court finds by clear and convincing evidence that the minor is a clear and present danger to himself or herself or the community. The Department of Juvenile Justice shall prepare a form for all minors charged under this subsection which states the period of detention and the relevant demographic information, including, but not limited

to, the gender, age, and race of the minor; whether or not the minor was represented by private counsel or a public defender; the current offense; and the minor's complete prior record, including any pending cases. The form shall be provided to the judge for determining whether the minor should be continued in secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or herself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department.

Section 11. For the purpose of incorporating the amendment made by this act to sections 985.255 and 985.26, Florida Statutes, in references thereto, subsection (2) of section 985.115, Florida Statutes, is reenacted to read:

985.115 Release or delivery from custody.—

(2) Unless otherwise ordered by the court under s. 985.255 or s. 985.26, and unless there is a need to hold the child, a person taking a child into custody shall attempt to release the child as follows:

(a) To the child's parent, guardian, or legal custodian or, if the child's parent, guardian, or legal custodian is unavailable, unwilling, or unable to provide supervision for the child, to any responsible adult. Prior to releasing the child to a responsible adult, other than the parent, guardian, or legal custodian, the person taking the child into custody may conduct a criminal history background check of the person to whom the child is to be released. If the person has a prior felony

conviction, or a conviction for child abuse, drug trafficking, or prostitution, that person is not a responsible adult for the purposes of this section. The person to whom the child is released shall agree to inform the department or the person releasing the child of the child's subsequent change of address and to produce the child in court at such time as the court may direct, and the child shall join in the agreement.

(b) Contingent upon specific appropriation, to a shelter approved by the department or to an authorized agent.

(c) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, to a law enforcement officer who shall deliver the child to a hospital for necessary evaluation and treatment.

(d) If the child is believed to be mentally ill as defined in s. 394.463(1), to a law enforcement officer who shall take the child to a designated public receiving facility as defined in s. 394.455 for examination under s. 394.463.

(e) If the child appears to be intoxicated and has threatened, attempted, or inflicted physical harm on himself or herself or another, or is incapacitated by substance abuse, to a law enforcement officer who shall deliver the child to a hospital, addictions receiving facility, or treatment resource.

(f) If available, to a juvenile assessment center equipped and staffed to assume custody of the child for the purpose of assessing the needs of the child in custody. The center may then release or deliver the child under this section with a copy of the assessment.

Section 12. For the purpose of incorporating the amendment made by this act to section 985.255 and 985.26, Florida

Statutes, in references thereto, subsection (2) of section 985.13, Florida Statutes, is reenacted to read:

985.13 Probable cause affidavits.—

(2) A person taking a child into custody who determines, under part V, that the child should be detained or released to a shelter designated by the department, shall make a reasonable effort to immediately notify the parent, guardian, or legal custodian of the child and shall, without unreasonable delay, deliver the child to the appropriate juvenile probation officer or, if the court has so ordered under s. 985.255 or s. 985.26, to a detention center or facility. Upon delivery of the child, the person taking the child into custody shall make a written report or probable cause affidavit to the appropriate juvenile probation officer. Such written report or probable cause affidavit must:

(a) Identify the child and, if known, the parents, guardian, or legal custodian.

(b) Establish that the child was legally taken into custody, with sufficient information to establish the jurisdiction of the court and to make a prima facie showing that the child has committed a violation of law.

Section 13. For the purpose of incorporating the amendment made by this act to section 985.255, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2) of section 985.245, Florida Statutes, is reenacted to read:

985.245 Risk assessment instrument.—

(2)

(b) The risk assessment instrument shall take into consideration, but need not be limited to, prior history of

failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. The risk assessment instrument shall also take into consideration appropriate aggravating and mitigating circumstances, and shall be designed to target a narrower population of children than s. 985.255. The risk assessment instrument shall also include any information concerning the child's history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted, and, if detention care is warranted, whether the child should be placed into secure or nonsecure detention care.

Section 14. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, subsection (2) of section 985.255, Florida Statutes, is reenacted to read:

985.255 Detention criteria; detention hearing.—

(2) A child who is charged with committing an offense that is classified as an act of domestic violence as defined in s. 741.28 and whose risk assessment instrument indicates secure detention is not appropriate may be held in secure detention if the court makes specific written findings that:

(a) Respite care for the child is not available.

(b) It is necessary to place the child in secure detention in order to protect the victim from injury.

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court.

After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in this section or s. 985.26.

Section 15. For the purpose of incorporating the amendment made by this act to section 985.255, Florida Statutes, in a reference thereto, subsection (1) of section 985.275, Florida Statutes, is reenacted to read:

985.275 Detention of escapee or absconder on authority of the department.—

(1) If an authorized agent of the department has reasonable grounds to believe that any delinquent child committed to the department has escaped from a residential commitment facility or from being lawfully transported thereto or therefrom, or has absconded from a nonresidential commitment facility, the agent shall notify law enforcement and, if the offense would require notification under chapter 960, notify the victim. The agent shall make every reasonable effort as permitted within existing resources provided to the department to locate the delinquent child, and the child may be returned to the facility or, if it is closer, to a detention center for return to the facility. However, a child may not be held in detention longer than 24 hours, excluding Saturdays, Sundays, and legal holidays, unless a special order so directing is made by the judge after a detention hearing resulting in a finding that detention is required based on the criteria in s. 985.255. The order shall

state the reasons for such finding. The reasons shall be reviewable by appeal or in habeas corpus proceedings in the district court of appeal.

Section 16. For the purpose of incorporating the amendment made by this act to section 985.255, Florida Statutes, in a reference thereto, subsection (6) of section 985.319, Florida Statutes, is reenacted to read:

985.319 Process and service.—

(6) If the petition alleges that the child has committed a delinquent act or violation of law and the judge deems it advisable to do so, under the criteria of s. 985.255, the judge may, by endorsement upon the summons and after the entry of an order in which valid reasons are specified, order the child to be taken into custody immediately, and in such case the person serving the summons shall immediately take the child into custody.

Section 17. This act shall take effect October 1, 2017.

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

1670
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Bob Gualtieri

Job Title Sheriff

Address 10750 Ulmerton Rd.
Street

Phone 727-582-6200

Largo FL 33778
City *State* *Zip*

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Latrala

4/25/17
Meeting Date

~~SB~~ 1670
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Juvenile

Name Melissa Villar

Job Title Executive Director

Address 169 Sinclair Rd
Street

Tallahassee FL 32312
City *State* *Zip*

Phone (850) 284-2080

Email normtallahassee@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NORML Tallahassee

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)

4-25-17
Meeting Date

SB 1670
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 1670

Name Meredith Stanfield

Job Title Director of Legislative Affairs

Address 2737 Centervien Dr.
Street

Tallahassee FL 32399
City *State* *Zip*

Phone 717-2716

Email meredith.stanfield@dju.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Juvenile Justice

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)

25 Apr 17
Meeting Date

1670
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall FL 3239
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

S-001 (10/14/14)

The Florida Senate

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 1672
INTRODUCER:	Community Affairs Committee; Transportation Committee; and Senator Latvala and others
SUBJECT:	Tampa Bay Area Regional Transit Authority
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Miller	TR	**Fav/CS**
2.	Present	Yeatman	CA	**Fav/CS**
3.	Pitts	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1672 renames the Tampa Bay Area Regional Transportation Authority (Transportation Authority) as the Tampa Bay Area Regional *Transit* Authority (Transit Authority) and makes a conforming name change to create the Metropolitan Planning Organization (MPO) Chairs Coordinating Committee within the Transit Authority. The bill also revises the short title and definitions; revises membership, appointment, term, and quorum requirements; requires the governing board to conduct an evaluation of specified committees; deletes requirements relating to establishment of certain other committees; and revises the new Transit Authority's express purposes to reflect the bill's changes. Additionally, the bill requires the Transit Authority to develop and adopt a regional transit development plan; deletes obsolete provisions; and conforms provisions to changes made by the act.

The bill also:

- Requires an action by the Transit Authority regarding the funding of commuter rail, heavy rail transit, or light rail transit to be approved by a majority vote of each MPO serving the county or counties where such rail investment will be made and the approval of the Legislature;
- Prohibits the Transit Authority from engaging in any advocacy regarding a referendum, ordinance, legislation, or proposal under consideration by any governmental entity or the Legislature which relates to such funding; and

Requires the Transit Authority to conduct a feasibility study before proceeding with the project and before any contract is issued, which must be submitted to the Speaker of the House, Senate President, and the board of county commissioners of the relevant Transit Authority counties.

The Transit Authority, the Transit Authority MPO Chairs Coordinating Committee, the five counties in the authority's revised coverage area, and PSTA and HART are expected to experience indeterminate, but likely insignificant, administrative expenses associated with provisions of the bill. See section V., "Fiscal Impact Statement" for details.

The bill has an effective date of July 1, 2017.

II. Present Situation:

The Tampa Bay Area Regional Transportation Authority (Transportation Authority)

The Transportation Authority is an agency of the state[1] created in 2007, whose purpose is improving mobility and expanding multimodal transportation options for passengers and freight throughout Citrus, Hernando, Hillsborough, Pasco, Pinellas, Manatee, and Sarasota Counties.[2]

The Transportation Authority governing board currently has 15 voting members as follows:

- Each of the county commissions of the seven counties making up the authority's coverage area appoint one elected official to serve 2-year terms, with not more than 3 consecutive terms.
- The Transportation Authority Metropolitan Planning Organization Chairs Coordinating Committee appoints one member, who must be a chair of one of the Metropolitan Planning Organizations in the region and may not serve more than three consecutive terms.
- Two members must be the mayor, or the mayor's designee, of the largest municipality within the service area of the Pinellas Suncoast Transit Authority (PSTA)[3] and the Hillsborough Area Regional Transit Authority (HART).[4] If a mayor chooses not to serve, the designee must be an elected official selected by the mayor from that largest municipality's city council or commission. The mayor or the designee serves 2-year terms, with not more than 3 consecutive terms. Additional provisions address required processes if a mayor or a designee leaves office, or if a mayor has served 3 consecutive terms.
- One membership on the board rotates every 2 years between the mayor or designee of Manatee County and the mayor or designee of the largest municipality within Sarasota County, with the Manatee County mayor or designee serving the first 2-year term. If a mayor

[1] Section 343.92, F.S.
[2] Section 343.922(1), F.S.
[3] The Legislature by special act in 1970 created the Central Pinellas Transit Authority. In 1982, the Central Pinellas Transit Authority was renamed as the PSTA. The PSTA is the public transit provider in Pinellas County with 38 bus routes, as well as two express routes to Tampa. Beach trollies and a number of other special programs are available. *See* the PSTA website for more information available at: http://psta.net/index.php. (Last visited April 10, 2017.)
[4] In 1979, the Hillsborough Transit Authority, also known as the Hillsborough Area Regional Transit Authority (HART), was created under Chapter 163, part V, F.S., authorizing creation of regional transportation authorities. HART operates fixed-route local and express bus service, door-to-door paratransit service, flex-route neighborhood connector service, a "lightened" version of bus rapid transit, and manages the TECO Line Streetcar System. See the HART website for more information available at: http://gohart.org/#. (Last visited April 10, 2017.)

chooses not to serve, the designee must be an elected official selected by the mayor from that largest municipality's city council or commission.

- The Governor appoints four business representatives (3-year terms and not more than 2 consecutive terms), each of whom must reside in one of the seven counties governed by the authority and may not be an elected official. At least one but not more than two of the four representatives must represent counties within the federally designated Tampa Bay Transportation Management Area.[5]

The Florida Department of Transportation (FDOT) secretary appoints two advisors to the board from the FDOT districts within the seven-county area (Districts 1 and 7).[6]

The respective appointing authority must fill a vacancy during a term within 90 days, in the same manner as the original appointment, for the remainder of the unexpired term.[7]

The Governor appointed the initial chair (to serve for a minimum of 2 years) from among the full board membership immediately upon their appointment.[8] These appointments were required within 45 days following the authority's creation.[9] At the end of each subsequent chair's term, the board elects a chair from among its members.[10] Eight members constitute a quorum, and the vote of eight members is required for any action taken by the authority.[11] The board may establish Planning, Policy, and Finance Committees; as well as a Citizens Advisory Committee and technical advisory committees.[12]

Consistent with statutory direction,[13] the Transportation Authority adopted a regional transportation master plan in May of 2009, and updated the plan in June of 2011, 2013, and 2015.[14] According to the annual *Transportation Authority Monitoring and Oversight, Fiscal Year 2015 Report*,[15] the most recent update "refined the established transit, freight, and roadway networks, added a regional trails network, added a future priority projects list, outlined a strategic vision for implementation, [and] identified eight regional priority projects." The update serves as the Regional Long Range Transportation Plan.

The Transportation Authority MPO Chairs Coordinating Committee

Created in 1993, the West Central Florida MPO Chairs Coordinating Committee was established to coordinate projects deemed regionally significant, review regionally significant land use decisions, review all proposed regionally significant projects affecting more than one MPO, and institute a conflict resolution process throughout the West Central Florida region. After creation

[5] Section 343.92(2), F.S.
[6] Section 343.92(2)(a), F.S.
[7] Section 343.92(2)(c), F.S.
[8] Section 343.92(5), F.S.
[9] *Id.*
[10] Section 343.92(6), F.S.
[11] Section 343.92(8), F.S.
[12] Section 343.92(9) and (11), F.S.
[13] Section 343.922(3)(a), F.S.
[14] Master plan updates are statutorily required every 5 years before July 1 per section 343.922(3)(d), F.S.
[15] Transportation Authority Monitoring and Oversight, Fiscal Year 2015 Report, p. 237, available at: http://www.ftc.state.fl.us/documents/reports/TAMO/FY2015Report.pdf. (Last visited April 10, 2017.)

of the Transportation Authority, the West Central Florida MPO Chairs Coordinating Committee and the authority more closely integrated planning efforts for the region. In 2016, the Chairs Coordinating Committee was placed within the Transportation Authority.[16,17]

The Need for Regional Planning

Numerous studies have concluded that regional planning is needed throughout the country to address transportation needs and services. One such study asserts that transportation planning in some places, including Tampa Bay, "remains hyper-localized" and recommends an umbrella or coordinating agency in the form of a regional transit authority.[18]

III. Effect of Proposed Changes:

Section 1 amends s. 339.175(6)(i), F.S., to substitute the term "transit" for "transportation authority" in the Transit Authority MPO Chairs Coordinating Committee within the Transit Authority.

Section 2 amends s. 343.90, F.S., to revise the short title from the "Tampa Bay Area Regional Transportation Authority Act" to the "Tampa Bay Area Regional Transit Authority Act".

Section 3 amends s. 343.91, F.S., redefining the term "authority" to mean the Transit Authority, covering Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties and any other contiguous county that is party to an agreement of participation. This revision eliminates express identification of Citrus and Sarasota Counties from the authority's revised coverage area. However, Sarasota County is contiguous to Manatee County, and Citrus County is contiguous to Hernando County.

Section 4 amends s. 343.92, F.S., to:

- Rename the Transportation Authority as the Transit Authority;
- Reduce the number of voting members from 15 to 13, appointed no later than 45 days after the creation of the authority, and revises the membership as follows:
  - Each of the county commissions of Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties appoint one county commissioner to serve 2-year terms, with not more than 3 consecutive terms. If a commissioner leaves elected office, the vacancy must be filled within 90 days. This change removes Citrus and Sarasota counties' representation on the Authority.
  - The mayor of the largest municipality within PSTA's service area and the mayor within HART's service area will serve for as long as they hold office.
  - PSTA and HART (or their successor agencies) each appoint from the membership of their respective governing bodies one member to serve a 2-year term with no more than 3

[16] *See* HB 7061 (2016).
[17] *See* the Transportation Authority MPO Chairs Coordinating Committee website for additional information on background, priority projects, and regional planning and coordination efforts, available at: http://www.tbarta.com/en/chairs-coordinating-committee/about/chairs-coordinating-committee. (Last visited April 10, 2017.)
[18] *See The Need for Regional Transportation Governance in Tampa Bay*, January 2017, available at: https://www.enotrans.org/wp-content/uploads/2017/01/Eno-TPB-White-Paper-Final.pdf. (Last visited April 10, 2017.)

consecutive terms. If a member no longer meets criteria for appointment, a vacancy exists and must be filled within 90 days.
  - The Governor appoints four members from the regional business community, each of whom must reside in one of the counties governed by the authority and may not be an elected official. Of the initially appointed members, one serves a 1-year term, two serve a 2-year term, and one serves a term as the initial chair. Thereafter, these members serve a 2-year term with not more than 3 consecutive terms. A vacancy during a term must be filled within 90 days in the same manner as the original appointment for the remainder of the unexpired term.

The Governor is required to appoint one of his appointees as the initial chair immediately upon their appointment. The initial chair serves a minimum of 2 years. At the end of the initial chair's term, the board elects a chair from among its members.

Seven, rather than eight, members constitute a quorum, and the vote of seven members is required by any action taken by the authority.

Beginning July 1, 2017, the authority's governing board must evaluate (and submit evaluation recommendations before the beginning of the 2018 Regular Session for) the abolishment, continuance, modification, or establishment of the following:
- Planning committee;
- Policy committee;
- Finance committee;
- Citizens advisory committee;
- Transit Authority MPO Chairs Coordinating Committee; and
- Transit management committee.

Section 5 amends s. 343.922, F.S., revising the purposes, powers, and duties of the Transit Authority to include:
- Planning, implementing, and operating mobility improvements and expansions of multimodal transportation options for passengers and freight throughout Hillsborough, Manatee, Pasco, and Pinellas Counties.
- Producing a regional *transit* development plan (rather than a regional *transportation* plan), integrating the transit development plans of participant counties, to include a prioritization of regionally significant transit projects and facilities. The bill directs the authority to provide to the Senate President and House Speaker on or before the beginning of the 2018 Regular Session a plan to produce the regional transit development plan. The development plan must adhere to guidance and regulations set forth by the FDOT or any successor agency, including without limitation:
  - Public involvement;
  - Collection and analysis of socioeconomic data;
  - Performance evaluation of existing services;
  - Service design and ridership forecasting; and
  - Financial planning.

- Serving, with the consent of the Governor or his or her designee, as the recipient of federal funds supporting an intercountry project or a regionally significant transit project that exists in a single county within the designated region.

An action by the Transit Authority regarding the funding of commuter rail, heavy rail transit, or light rail transit, as defined in s. 343.91, F.S., or any combination of such rail transits, requires approval by a majority vote of each MPO serving the county or counties where the rail transit investment will be made, and the approval of the Legislature by an act of general law.

The Transit Authority may not engage in any advocacy regarding a referendum, ordinance, legislation, or proposal under consideration by any governmental entity or the Legislature which seeks to approve the funding of commuter rail, heavy rail transit, or light rail transit, as defined in s. 343.91, F.S., or any combination thereof.

The Transit Authority must conduct a feasibility study through an independent third party, for any project of commuter rail, heavy rail transit, or light rail transit, as defined in s. 343.91, F.S., or any combination thereof, before proceeding with the development of the project and before any related contract is issued. The feasibility study shall be submitted, upon completion, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the board of county commissioners of Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties.

Sections 3 through 10 delete obsolete language and conform provisions to changes made by the act.

Section 11 provides the bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Article VII, s. 18(d) of the Florida Constitution provides laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws,

the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

An exemption from the mandates provision may apply if the expected fiscal impact on municipalities/counties is less than $2 million. Because the fiscal impact is anticipated to be less than $2 million, the bill appears to be exempt from the mandate requirements.

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:

To the extent that the bill's changes result in the provision of improved and more efficient regional transit services in the Tampa Bay area, public mobility options would be increased.

C. Government Sector Impact:

The Transit Authority, the Transit Authority MPO Chairs Coordinating Committee, the five counties in the authority's revised coverage area, and PSTA and HART are expected to experience indeterminate, but likely insignificant, administrative expenses associated with the organization's name change, committee evaluation and recommendations, and various planning requirements related to producing a regional transit development plan.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 339.175, 343.90, 343.91, 343.92, 343.922, 343.94, 343.947, 343.95, 343.975, and 343.976.

IX. Additional Information:

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

CS/CS by Community Affairs on April 17, 2017:

- Adds Hernando County to the list of expressly covered counties under the Transit Authority;
- Revises the composition of the Transit Authority governing board such that the county commission of Hernando County shall appoint one county commissioner to the board, and the Governor shall appoint one additional member, bringing the governor's appointee total to four. These two new members replace the members that were to be appointed by the Speaker of the House and the President of the Senate under the previous version of the bill;
- Restores current law that requires the secretary of the Florida DOT to appoint two advisors to the board;
- Provides that the chair of the board shall be selected from the board's members, rather than from the appointments of the Governor, Speaker of the House, or President of the Senate specifically;
- Requires an action by Transit Authority regarding the funding of commuter rail, heavy rail transit, or light rail transit to be approved by a majority vote of each MPO serving the county or counties where such rail investment will be made and the approval of the Legislature;
- Prohibits the Transit Authority from engaging in any advocacy regarding a referendum, ordinance, legislation, or proposal under consideration by any governmental entity or the Legislature which relates to such funding; and
- Requires the Transit Authority to conduct a feasibility study before proceeding with the project and before any contract is issued, which must be submitted to the Speaker of the House, Senate President, and the board of county commissioners of the relevant Transit Authority counties.

CS by Transportation on March 22, 2017:

- Makes changes relating to the Transit Authority's membership. Specifically:
  - Restores the two mayors from the largest municipality within PSTA's and HART's service areas to governing board membership; and
  - Removes the ability of the mayors from the largest municipality within PSTA's and HART's service areas to choose not to serve and to appoint a designee to serve on the governing board, as well as provisions relating to termination of a designee's term and requirements for filling a vacancy.

B. Amendments:

None.

By the Committees on Community Affairs; and Transportation; and Senators Latvala, Galvano, and Rouson

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A bill to be entitled

An act relating to the Tampa Bay Area Regional Transit Authority; amending s. 339.175, F.S.; creating the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee to replace the Tampa Bay Area Regional Transportation Authority Metropolitan Planning Organization Chairs Coordinating Committee; providing that the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee is created within the Tampa Bay Area Regional Transit Authority; amending s. 343.90, F.S.; revising the short title to "Tampa Bay Area Regional Transit Authority Act"; amending s. 343.91, F.S.; revising the definition of the term "authority" to mean the Tampa Bay Area Regional Transit Authority and to include only Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties and any other contiguous county that is party to an agreement of participation; revising the definition of the term "commuter rail"; amending s. 343.92, F.S.; creating the Tampa Bay Area Regional Transit Authority to replace the Tampa Bay Area Regional Transportation Authority; decreasing voting membership on the governing board of the authority; requiring the members to be appointed within a specified period; revising appointment and term requirements of such membership; revising requirements for filling vacancies on the board; requiring the Governor to appoint an initial chair of the board from

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one of the four members appointed by the Governor; providing that seven members of the board constitute a quorum; providing that the vote of seven members is necessary for any action to be taken by the authority; requiring the board to evaluate the abolishment, continuance, modification, or establishment of specified committees, beginning on a specified date; requiring the board to submit its recommendations for abolishment, continuance, modification, or establishment of the committees to the Legislature before a specified time; deleting requirements related to the establishment of a Transit Management Committee, a Citizens Advisory Committee, and technical advisory committees; conforming provisions to changes made by the act; amending s. 343.922, F.S.; revising the express purposes of the authority to include planning, implementing, and operating mobility improvements and expansions of certain multimodal transportation options, producing a certain regional transit development plan, and serving as the recipient of certain federal funds under certain circumstances; directing the authority to provide to the Legislature a plan to produce the regional transit development plan by a specified date; providing requirements for the regional transit development plan; requiring the authority to develop and adopt a regional transit development plan, rather than a transportation master plan; deleting obsolete provisions; conforming provisions to changes made by the act; providing that

an action by the authority regarding the funding of commuter rail, heavy rail transit, or light rail transit, or any combination thereof, requires approval by a majority vote of each M.P.O. serving the county or counties where such rail transit investment will be made, and the approval of the Legislature by an act of general law; prohibiting the authority from engaging in certain advocacy that seeks to approve the funding of commuter rail, heavy rail transit, or light rail transit, or any combination thereof; requiring the authority to conduct a feasibility study, through an independent third party, for any project of commuter rail, heavy rail transit, or light rail transit, or any combination thereof, before proceeding with the development of the project and before any related contracts are issued; requiring the feasibility study to be submitted to the Governor, the Legislature, and the board of county commissioners of specified counties; amending ss. 343.94, 343.947, 343.95, 343.975, and 343.976, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (i) of subsection (6) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(6) POWERS, DUTIES, AND RESPONSIBILITIES.—The powers, privileges, and authority of an M.P.O. are those specified in

this section or incorporated in an interlocal agreement authorized under s. 163.01. Each M.P.O. shall perform all acts required by federal or state laws or rules, now and subsequently applicable, which are necessary to qualify for federal aid. It is the intent of this section that each M.P.O. shall be involved in the planning and programming of transportation facilities, including, but not limited to, airports, intercity and high-speed rail lines, seaports, and intermodal facilities, to the extent permitted by state or federal law.

(i) The Tampa Bay Area Regional Transit ~~Transportation~~ Authority Metropolitan Planning Organization Chairs Coordinating Committee is created within the Tampa Bay Area Regional Transit ~~Transportation~~ Authority, composed of the M.P.O.'s serving Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. The authority shall provide administrative support and direction to the committee. The committee must, at a minimum:

1. Coordinate transportation projects deemed to be regionally significant by the committee.

2. Review the impact of regionally significant land use decisions on the region.

3. Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the M.P.O.'s represented on the committee.

4. Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.

Section 2. Section 343.90, Florida Statutes, is amended to

read:

343.90 Short title.—This part may be cited as the "Tampa Bay Area Regional Transit ~~Transportation~~ Authority Act."

Section 3. Paragraphs (a) and (e) of subsection (1) of section 343.91, Florida Statutes, are amended to read:

343.91 Definitions.—

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

(a) "Authority" means the Tampa Bay Area Regional Transit ~~Transportation~~ Authority, the body politic and corporate and agency of the state created by this part, covering ~~the seven-county area comprised of Citrus,~~ Hernando, Hillsborough, Manatee, Pasco, and Pinellas~~, Manatee, and Sarasota~~ Counties and any other contiguous county that is party to an agreement of participation.

(e)1. "Commuter rail" means a complete system of tracks, guideways, stations, and rolling stock necessary to effectuate medium-distance to long-distance passenger rail service to, from, or within the municipalities within the authority's designated ~~seven-county~~ region.

2. "Heavy rail transit" means a complete rail system operating on an electric railway with the capacity for a heavy volume of traffic, characterized by high-speed and rapid-acceleration passenger rail cars operating singly or in multicar trains on fixed rails in separate rights-of-way from which all other vehicular and pedestrian traffic are excluded. "Heavy rail transit" includes metro, subway, elevated, rapid transit, and rapid rail systems.

3. "Light rail transit" means a complete system of tracks, overhead catenaries, stations, and platforms with lightweight

passenger rail cars operating singly or in short, multicar trains on fixed rails in rights-of-way that are not separated from other traffic for much of the way.

Section 4. Section 343.92, Florida Statutes, is amended to read:

343.92 Tampa Bay Area Regional Transit ~~Transportation~~ Authority.—

(1) There is created and established a body politic and corporate, an agency of the state, to be known as the Tampa Bay Area Regional Transit ~~Transportation~~ Authority.

(2) The governing board of the authority shall consist of 13 ~~15~~ voting members appointed no later than 45 days after the creation of the authority.

(a) The secretary of the department shall appoint two advisors to the board who must be the district secretary for each of the department districts within the designated ~~seven-county~~ area of the authority.

(b) The 13 ~~15~~ voting members of the board shall be as follows:

1. The county commissions of ~~Citrus,~~ Hernando, Hillsborough, Manatee, Pasco, and Pinellas~~, Manatee, and Sarasota~~ Counties shall each appoint one county commissioner ~~elected official~~ to the board. Members appointed under this subparagraph shall serve 2-year terms with not more than three consecutive terms being served by any person. If a member under this subparagraph leaves elected office, a vacancy exists on the board to be filled as provided in this subparagraph within 90 days ~~subparagraph~~.

~~2. The Tampa Bay Area Regional Transportation Authority~~

~~(TBARTA) Metropolitan Planning Organization Chairs Coordinating Committee shall appoint one member to the board who must be a chair of one of the six metropolitan planning organizations in the region. The member appointed under this subparagraph shall serve a 2-year term with not more than three consecutive terms being served by any person.~~

2.~~3.a.~~ Two members of the board shall be the mayor~~, or the mayor's designee,~~ of the largest municipality within the service area of each of the following independent transit agencies or their legislatively created successor agencies: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. The largest municipality is that municipality with the largest population as determined by the most recent United States Decennial Census.

~~b. Should a mayor choose not to serve, his or her designee must be an elected official selected by the mayor from that largest municipality's city council or city commission. A mayor or his or her designee shall serve a 2-year term with not more than three consecutive terms being served by any person.~~

~~c. A designee's term ends if the mayor leaves office for any reason. If a designee leaves elected office on the city council or commission, a vacancy exists on the board to be filled by the mayor of that municipality as provided in sub-subparagraph a.~~

3. The following independent transit agencies or their legislatively created successor agencies shall each appoint from the membership of their governing bodies one member to the board: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. Each member appointed under this

subparagraph shall serve a 2-year term with not more than three consecutive terms being served by any person. If a member no longer meets the transit authority's criteria for appointment, a vacancy exists on the board, which must be filled as provided in this subparagraph within 90 days.

~~d. A mayor who has served three consecutive terms on the board must designate an elected official from that largest municipality's city council or city commission to serve on the board for at least one term.~~

~~4.a. One membership on the board shall rotate every 2 years between the mayor, or his or her designee, of the largest municipality within Manatee County and the mayor, or his or her designee, of the largest municipality within Sarasota County. The mayor, or his or her designee, from the largest municipality within Manatee County shall serve the first 2-year term. The largest municipality is that municipality with the largest population as determined by the most recent United States Decennial Census.~~

~~b. Should a mayor choose not to serve, his or her designee must be an elected official selected by the mayor from that municipality's city council or city commission.~~

4.~~5.~~ The Governor shall appoint to the board four members from the regional ~~four~~ business community ~~representatives~~, each of whom must reside in one of the ~~seven~~ counties governed by the authority and~~, none of whom~~ may not be an elected official ~~officials, and at least one but not more than two of whom shall represent counties within the federally designated Tampa Bay Transportation Management Area~~. Of the members initially appointed under this subparagraph, one shall serve a 1-year

term, two shall serve 2-year terms, and one shall serve a term as the initial chair as provided in subsection (5). Thereafter, a member ~~Members~~ appointed under this subparagraph ~~by the Governor~~ shall serve a 2-year term ~~3-year terms~~ with not more than three ~~two~~ consecutive terms being served by any person.

~~(c)~~ Appointments may be staggered to avoid mass turnover at the end of any 2-year or 4-year period. A vacancy during a term shall be filled ~~by the respective appointing authority~~ within 90 days in the same manner as the original appointment ~~and only~~ for the remainder of the unexpired term.

(3) The members of the board shall serve without compensation but shall be entitled to receive from the authority reimbursement for travel expenses and per diem actually incurred in connection with the business of the authority as provided in s. 112.061.

(4) Members of the board shall comply with the applicable financial disclosure requirements of ss. 112.3145, 112.3148, and 112.3149.

(5) The Governor shall appoint one of the four members appointed under subparagraph (2)(b)4. as the initial chair ~~from among the full membership~~ of the board immediately upon their appointment. ~~In no case may those appointments be made any later than 45 days following the creation of the authority.~~ The initial chair shall serve ~~will hold this position for~~ a minimum term of 2 years. The board shall elect a vice chair and secretary-treasurer from among its members who shall serve a minimum term of 1 year and shall establish the duties and powers of those positions during its inaugural meeting. During its inaugural meeting, the board shall ~~will~~ also establish its rules

of conduct and meeting procedures.

(6) At the end of the initial chair's term, the board shall elect a chair from among the ~~its~~ members. The chair shall hold office at the will of the board. In that election, the board shall also elect a vice chair and secretary-treasurer.

(7) The first meeting of the authority shall be held no later than 60 days after the creation of the authority.

(8) Seven ~~Eight~~ members of the board shall constitute a quorum, and the vote of seven ~~eight~~ members is necessary for any action to be taken by the authority. The authority may meet upon the constitution of a quorum. A vacancy does not impair the right of a quorum of the board to exercise all rights and the ability to perform all duties of the authority.

(9) Beginning July 1, 2017, the board must evaluate the abolishment, continuance, modification, or establishment of ~~may establish committees for~~ the following committees ~~areas~~:

(a) Planning committee.

(b) Policy committee.

(c) Finance committee.

(d) Citizens advisory committee.

(e) Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee.

(f) Transit management committee.

(g) Technical advisory committee.

The board must submit its recommendations for abolishment, continuance, modification, or establishment of the committees to the President of the Senate and the Speaker of the House of Representatives before the beginning of the 2018 Regular

Session.

(10) The authority may employ an executive director, an executive secretary, its own legal counsel and legal staff, technical experts, engineers, and such employees, permanent or temporary, as it may require. The authority shall determine the qualifications and fix the compensation of such persons, firms, or corporations and may employ a fiscal agent or agents; however, the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may, except for duties specified in chapter 120, delegate its power to one or more of its agents or employees to carry out the purposes of this part, subject always to the supervision and control of the authority.

~~(11)(a) The authority shall establish a Transit Management Committee comprised of the executive directors or general managers, or their designees, of each of the existing transit providers and bay area commuter services.~~

~~(b) The authority shall establish a Citizens Advisory Committee comprised of appointed citizen committee members from each county and transit provider in the region, not to exceed 16 members.~~

~~(c) The authority may establish technical advisory committees to provide guidance and advice on regional transportation issues. The authority shall establish the size, composition, and focus of any technical advisory committee created.~~

(11)~~(d)~~ Persons appointed to a committee shall serve without compensation but may be entitled to per diem or travel

expenses as provided in s. 112.061.

Section 5. Subsection (1), paragraph (a) of subsection (2), subsection (3), subsection (4), and paragraph (g) of subsection (5) of section 343.922, Florida Statutes, are amended, and subsections (9) and (10) are added to that section, to read:

343.922 Powers and duties.—

(1) The express purposes of the authority are to:

(a) Plan, implement, and operate ~~improve~~ mobility improvements and expansions of ~~expand~~ multimodal transportation options for passengers and freight throughout the designated ~~seven-county Tampa Bay~~ region.

(b) Produce a regional transit development plan, integrating the transit development plans of participant counties, to include a prioritization of regionally significant transit projects and facilities.

1. The authority shall provide to the President of the Senate and the Speaker of the House of Representatives, on or before the beginning of the 2018 Regular Session, a plan to produce the regional transit development plan.

2. The regional transit development plan prepared by the authority must adhere to guidance and regulations set forth by the department or any successor agency, including, but not limited to:

a. Public involvement;

b. Collection and analysis of socioeconomic data;

c. Performance evaluation of existing services;

d. Service design and ridership forecasting; and

e. Financial planning.

(c) Serve, with the consent of the Governor or his or her

designee, as the recipient of federal funds supporting an intercounty project or a regionally significant transit project that exists in a single county within the designated region.

(2)(a) The authority has the right to plan, develop, finance, construct, own, purchase, operate, maintain, relocate, equip, repair, and manage those public transportation projects, such as express bus services; bus rapid transit services; light rail, commuter rail, heavy rail, or other transit services; ferry services; transit stations; park-and-ride lots; transit-oriented development nodes; or feeder roads, reliever roads, connector roads, bypasses, or appurtenant facilities, that are intended to address critical transportation needs or concerns in the ~~Tampa Bay~~ region as identified by the authority ~~by July 1, 2009~~. These projects may also include all necessary approaches, roads, bridges, and avenues of access that are desirable and proper with the concurrence of the department, as applicable, if the project is to be part of the State Highway System.

(3)(a) ~~No later than July 1, 2009,~~ The authority shall develop and adopt a regional transit development ~~transportation master~~ plan that provides a vision for a regionally integrated ~~multimodal~~ transportation system. The goals and objectives of the ~~master~~ plan are to identify areas of the ~~Tampa Bay~~ region where ~~multimodal~~ mobility, traffic safety, freight mobility, and efficient emergency evacuation alternatives need to be improved; identify areas of the region where multimodal transportation systems would be most beneficial to enhance mobility and economic development; develop methods of building partnerships with local governments, existing transit providers, expressway authorities, seaports, airports, and other local, state, and

federal entities; develop methods of building partnerships with CSX Corporation and CSX Transportation, Inc., to craft mutually beneficial solutions to achieve the authority's objectives, and with other private sector business community entities that may further the authority's mission, and engage the public in support of regional multimodal transportation improvements. The ~~master~~ plan shall identify and may prioritize projects that will accomplish these goals and objectives, including, without limitation, the creation of express bus and bus rapid transit services, light rail, commuter rail, and heavy rail transit services, ferry services, freight services, and any other multimodal transportation system projects that address critical transportation needs or concerns, pursuant to subsection (2); and identify the costs of the proposed projects and revenue sources that could be used to pay those costs. In developing the ~~master~~ plan, the authority shall review and coordinate with the future land use, capital improvements, and traffic circulation elements of its member local governments' comprehensive plans and the plans, programs, and schedules of other units of government having transit or transportation authority within whose jurisdictions the projects or improvements will be located to define and resolve potential inconsistencies between such plans and the authority's developing ~~master~~ plan. ~~By July 1, 2008, the authority, working with its member local governments, shall adopt a mandatory conflict resolution process that addresses consistency conflicts between the authority's regional transportation master plan and local government comprehensive plans.~~

(b) The authority shall consult with the department to

further the goals and objectives of the Strategic Regional Transit Needs Assessment completed by the department.

(c) Before the adoption of the regional transit development ~~master~~ plan, the authority shall hold at least one public meeting in each of the ~~seven~~ counties within the designated region. At least one public hearing must be held before the authority's board.

(d) After its adoption, the regional transit development ~~master~~ plan shall be updated every 5 years before July 1.

(e) The authority shall present the original regional transit development ~~master~~ plan and updates to the governing bodies of the counties within the designated ~~seven-county~~ region, to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee, and to the legislative delegation members representing those counties within 90 days after adoption.

(f) The authority shall coordinate plans and projects with the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee, to the extent practicable, and participate in the regional M.P.O. planning process to ensure regional comprehension of the authority's mission, goals, and objectives.

(g) The authority shall provide administrative support and direction to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee as provided in s. 339.175(6)(i).

(4) The authority may undertake projects or other improvements in the regional transit development ~~master~~ plan in phases as particular projects or segments become feasible, as determined by the authority. The authority shall coordinate

project planning, development, and implementation with the applicable local governments. The authority's projects that are transportation oriented must be consistent to the maximum extent feasible with the adopted local government comprehensive plans at the time such projects are funded for construction. Authority projects that are not transportation oriented and meet the definition of development pursuant to s. 380.04 must be consistent with the local comprehensive plans. In carrying out its purposes and powers, the authority may request funding and technical assistance from the department and appropriate federal and local agencies, including, but not limited to, state infrastructure bank loans.

(5) The authority is granted and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but not limited to, the following rights and powers:

(g) To borrow money and to make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, hereinafter in this chapter sometimes called "revenue bonds" of the authority, for the purpose of financing all or part of the mobility improvements within the ~~Tampa Bay~~ region, as well as the appurtenant facilities, including all approaches, streets, roads, bridges, and avenues of access authorized by this part, the bonds to mature not exceeding 40 years after the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals, or other charges.

(9)(a) An action by the authority regarding the funding of

commuter rail, heavy rail transit, or light rail transit, as defined in s. 343.91, or any combination thereof, requires approval by a majority vote of each M.P.O. serving the county or counties where such rail transit investment will be made, and the approval of the Legislature by an act of general law.

(b) The authority may not engage in any advocacy regarding a referendum, ordinance, legislation, or proposal under consideration by any governmental entity or the Legislature which seeks to approve the funding of commuter rail, heavy rail transit, or light rail transit, as defined in s. 343.91, or any combination thereof.

(10) The authority must conduct a feasibility study, through an independent third party, for any project of commuter rail, heavy rail transit, or light rail transit, as defined in s. 343.91, or any combination thereof, before proceeding with the development of the project and before any related contract is issued. The feasibility study shall be submitted, upon completion, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the board of county commissioners of Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties.

Section 6. Subsection (1) of section 343.94, Florida Statutes, is amended to read:

343.94 Bond financing authority.—

(1) Pursuant to s. 11(f), Art. VII of the State Constitution, the Legislature approves bond financing by the Tampa Bay Area Regional Transit ~~Transportation~~ Authority for construction of or improvements to commuter rail systems, transit systems, ferry systems, highways, bridges, toll

collection facilities, interchanges to the system, and any other transportation facility appurtenant, necessary, or incidental to the system. Subject to terms and conditions of applicable revenue bond resolutions and covenants, such costs may be financed in whole or in part by revenue bonds issued pursuant to paragraph (2)(a) or paragraph (2)(b), whether currently issued or issued in the future or by a combination of such bonds.

Section 7. Section 343.947, Florida Statutes, is amended to read:

343.947 Department may be appointed agent of authority for construction.—The department may be appointed by the authority as its agent for the purpose of constructing and completing transportation projects, and improvements and extensions thereto, in the authority's regional transit development ~~master~~ plan. In such event, the authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts, and instruments relating thereto; shall request the department to do such construction work, including the planning, surveying, and actual construction of the completion, extensions, and improvements to the system; and shall transfer to the credit of an account of the department in the treasury of the state the necessary funds therefor. The department shall proceed with such construction and use the funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of commuter rail systems, transit systems, ferry systems, roads, bridges, and related transportation facilities.

Section 8. Subsections (1) and (3) of section 343.95, Florida Statutes, are amended to read:

343.95 Acquisition of lands and property.—

(1) For the purposes of this part, the authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for any purpose of this part, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities within the ~~seven-county Tampa Bay~~ region designated ~~identified~~ by the authority; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. The authority may condemn any material and property necessary for such purposes.

(3) When the authority acquires property for a transportation facility within the designated ~~seven-county Tampa Bay~~ region, the authority is not subject to any liability imposed by chapter 376 or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. This subsection does not affect the rights or liabilities of any past or future owners of the acquired property, nor does it affect the liability of any governmental entity for the results of its actions which create or exacerbate a pollution source. The authority and the Department of Environmental Protection may

enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

Section 9. Subsections (1) and (3) of section 343.975, Florida Statutes, are amended to read:

343.975 Complete and additional statutory authority.—

(1) The powers conferred by this part are supplemental to the existing powers of the board and the department. This part does not repeal any of the provisions of any other law, general, special, or local, but supplements such other laws in the exercise of the powers provided in this part and provides a complete method for the exercise of the powers granted in this part. The projects planned and constructed by the Tampa Bay Area Regional Transit ~~Transportation~~ Authority shall comply with all applicable federal, state, and local laws. The extension and improvement of the system, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821. An approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in any other political subdivision of the state is not required for the issuance of such bonds pursuant to this part.

(3) This part does not preclude the department from acquiring, holding, constructing, improving, maintaining, operating, or owning tolled or nontolled facilities funded and constructed from nonauthority sources that are part of the State

Highway System within the geographical boundaries of the Tampa Bay Area Regional Transit ~~Transportation~~ Authority.

Section 10. Section 343.976, Florida Statutes, is amended to read:

343.976 Effect on local government action.—This act does not prohibit any local government that is a member of the Tampa Bay Area Regional Transit ~~Transportation~~ Authority from participating in or creating any other transit authority, regional transportation authority, or expressway authority.

Section 11. This 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)

4/25/17
Meeting Date

SB 1672
Bill Number (if applicable)

Topic TBARTA

Amendment Barcode (if applicable)

Name RYAN PATMINTRA

Job Title

Address 4300 W CYPRESS ST
Street

Phone

TAMPA FL 33607
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing TAMPA BAY PARTNERSHIP

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 1070
INTRODUCER:	Ethics and Elections Committee and Senator Hutson
SUBJECT:	Voter Registration List Maintenance
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	**Fav/CS**
2.	Pitts	Hansen	AP	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1070 authorizes the Secretary of State to enter into information sharing agreements with other states for the purpose of maintaining the statewide voter registration system. The bill directs the Secretary to use that data to identify registered voters or applications for voter registration that would be ineligible to vote and provides that those involved with such a data sharing agreement must keep all personal information confidential, if that information or data was confidential in its state of origin.

The bill, along with its public records counterpart CS/SB 1072, will provide the statutory authorization for Florida to join the Electronic Registration Information Center (ERIC), a private, non-profit, interstate consortium designed to help states improve the accuracy of their voter rolls through data match identification of problematic registrations and to increase access to voter registration for all eligible citizens. The bill would require that the Secretary of State or his or her designee be on the board of directors of ERIC or any other similar entity it joins.

The Department of State may incur costs related to the initial membership fee and annual user fees if the department elects to participate in the program. The one-time membership fee for states is $25,000 and the annual user fee is estimated to be between $50,000 and $75,000.

County supervisors of elections may incur costs related to maintenance activity associated by the receipt of information from ERIC, including outreach to voters to confirm addresses or eligibility. However, they may also incur cost savings due to more efficient processes and

reliable sources of data to maintain the voter rolls over the long term. The actual expenses and cost savings are indeterminate.

The bill will take effect on July 1, 2017.

II. Present Situation:

No complete national system currently exists to identify duplicate voter registrations across state lines. While there is no criminal or civil penalty for being registered in two states simultaneously, it is important to identify voters registered in multiple jurisdictions to ensure the accuracy of the voter rolls. Currently, the process in Florida relies upon either the voter voluntarily notifying Florida election officials that they have moved and registered to vote in a new state or, another state's voting officials notifying Florida election officials that the elector has registered there. In the event that Florida election officials receive notice from another state's election officials that one of its electors has registered in another state, the law requires that notification to be treated as a request from the voter to have his or her name removed from the Florida Voter Registration System.[1]

If Florida election officials do not receive notice that the elector has moved, a voter who has moved out of state will eventually be put into an inactive status pursuant to the county supervisors of elections biennial voter list maintenance efforts and culled from the state's rolls by the *second subsequent general election*, as provided by federal law.[2] That means that a voter who has moved can remain on Florida's voter rolls for up to 4 years. It ***does not mean***, however, that such a voter is casting ballots in two states in the same election; which would be a felony under Florida law.[3]

Florida Voter List Maintenance Information[4]

The Secretary of State, as the chief election officer of the State, is responsible for the operation and maintenance of the statewide voter registration system implemented as part of the Help America Vote Act of 2002.[5] The 67 county Supervisors of Elections are primarily responsible for the registration of voters under section 98.045, F.S., and records maintenance activities including removal of voters pursuant to sections 98.065 and 98.075, F.S., Supervisors of Elections are the only election officials with authority to register and remove voters from the registration rolls.

These ongoing records maintenance activities are conducted to protect the integrity of the electoral process through current and accurate records and to ensure only eligible voters are registered in the statewide voter registration system. By law, any maintenance program or activity must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002.

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[1] Section 98.045(2)(b), F.S.
[2] Section 98.065(4)(b) and (c), F.S.
[3] Section 104.18, F.S.
[4] This section is derived almost in its entirety from the Present Situation section of the Department of State bill analysis for SB 1070 (2017), provided by the pursuant to the Legislature's Agency Bill Analysis Request (ABAR) system.
[5] *See also* § 98.035, F.S.

As part of maintenance activities, the Florida Department of State's Division of Elections and county supervisor of elections offices may receive and use information from a variety of credible and reliable sources, including other Florida state and local agencies, federal government, and other states' elections officials, that may be useful in ensuring the accuracy of the registration system. Currently, information as to whether a voter has registered elsewhere is contingent upon the voter voluntarily indicating on a voter registration application that he or she was previously registered elsewhere. A voter may provide that information at the time he or she first registers or in subsequent registration record updates. There is no requirement that a registered voter must notify a state that he or she has moved out of the state and may have registered elsewhere.

If a registered voter indicates a prior state of registration, Florida will notify the other State within two weeks of registration to take appropriate action, and other States reciprocate with similar information.[6] If the Division of Elections is notified that a Florida registered voter may have registered elsewhere the information is processed and forwarded to the county Supervisor of Elections to take appropriate action to remove the voter. Sometimes the out-of-state cancellation information is forwarded directly to the county Supervisor of Elections. As noted above, a notice from another state election official that a voter has registered there is to be processed as if it were a direct request by the voter to be removed from rolls.[7]

Voter registration information once submitted to a governmental agency is public record pursuant to chapter 119, F.S., but a few exceptions exist. The social security number, the driver license number or state identification card number, where the voter submitted his or her registration information, and whether the voter declined to register or update voter registration information are exempt from public disclosure.[8] Additionally, while a voter's signature can be viewed or inspected, it cannot be copied.[9] Further, the law allows voters who fall into a number of high-risk professional classes to request that certain information such as their address and phone numbers and dates of birth be exempt for themselves and their spouses and children.[10] Finally, the "voter stalking exemption" that the Legislature adopted in 2010 exempts the names, addresses, and telephone numbers of actual or threatened victims who participate in the Attorney General's Address Confidentiality Program for Victims of Domestic Violence.[11]

Electronic Registration Information Center (ERIC)

The Florida State Association of Supervisors of Elections has made joining ERIC one of its two *priority* legislative issues for the 2017 session.[12] This bill, along with its linked public records bill CS/SB 1072, provides the Secretary of State the necessary legal authorization to do so.

ERIC represents the best available, though admittedly only a partial, solution to identifying interstate duplicate voter registrations.

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[6] Section 97.073(2), F.S.
[7] Section 98.045(2), F.S.
[8] Section 97.0585, F.S.
[9] *Id.*
[10] Section 119.071(4)(d)1., F.S.
[11] Section 741.4651, F.S.
[12] FSASE, 2017 Legislative Issues, available at, http://www.myfloridaelections.com/portals/fsase/Documents/Public%20Policy/2017_FSASE_Legislative_Priorities.pdf (last accessed (Mar. 20, 2017)

"The Electronic Registration Information Center (ERIC) is a ***non-profit organization*** (corporation) with the sole mission of assisting states to improve the accuracy of America's voter rolls and increase access to voter registration for all eligible citizens. ERIC is governed and managed by states who choose to join, and was formed in 2012 with assistance from The Pew Charitable Trusts."[13] It is essentially a multistate, data-sharing partnership that uses modern technology to provide election officials with information to keep voter lists complete and current, and to increase voter registration by notifying qualified, unregistered voters.[14]

As of July 2016, ERIC has 20 state members plus the District of Columbia: Alabama, Alaska, Colorado, Connecticut, Delaware, Louisiana, Illinois, Maryland, Minnesota, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Washington, West Virginia, and Wisconsin.[15]

ERIC is controlled by a Board of Directors with each State having a vote; however, only the first 20 states to join appoint a member of the Board of Directors.[16] Florida would be the 21st state to join ERIC.

By joining ERIC, each member state submits, at a minimum, its voter registration and motor vehicle licensee data (which it updates every 60 days), including voter names, addresses, dates of birth, and last four digits of social security numbers.[17] However, ERIC does not require information such as race, religion, political party affiliation, or other information that can be used for purposes of discrimination. Sensitive, private data is anonymized (or "one-way hashing") and then transmitted to ERIC for use in the data matching process.[18] ERIC assures that all data received is collected, matched, and stored in an environment with state-of-the-art security.[19] The ERIC website offers a technical and security brief, for those seeking more information about privacy and technical concerns: http://www.ericstates.org/images/documents/ERIC_Tech_and_Security_Brief_v2.1.pdf.

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[13] http://www.ericstates.org/

[14] The Pew Charitable Trusts, *ERIC Mailings Encourage Voter Registration in Washington State* (March 9, 2016), available at http://www.pewtrusts.org/en/research-and-analysis/analysis/2016/03/09/eric-mailings-encourage-voter-registration-in-washington-state (last accessed Jan. 25 2017). Recent data show that after the State of Washington sent mailings through the Electronic Registration Information Center (ERIC) to eligible but unregistered voters, new registrations came in at a rate of 12.4 percent (27,000/200,000). *Id.*

[15] *Id.;* The most-recent census data indicates that the top 5 states with residents emigrating to Florida are New York, Georgia, Texas, New Jersey, and North Carolina. http://www.governing.com/gov-data/census/2010-census-state-migration-statistics.html (run query for "Moving to Florida").

[16] http://www.ericstates.org/faq; *see also*, ERIC Bylaws, Article III (last updated October 28, 2015), available at http://www.ericstates.org/images/documents/ERIC_Bylaws_10-28-2015.pdf (last visited Mar. 20, 2017). Florida could obtain a Director's seat either through a supermajority vote of three-fourths of the membership or by filling a vacancy should one arise. Florida would be first in line to fill a vacancy as the 21st state to join the consortium. *Id.*

[17] http://www.ericstates.org/; *see also*, ERIC Bylaws, Membership Agreement (Exhibit A), § 2b. (last updated October 28, 2015), available at http://www.ericstates.org/images/documents/ERIC_Bylaws_10-28-2015.pdf (last visited Mar. 20, 2017).

[18] http://www.ericstates.org/faq; *see also*, ERIC, *ERIC, Technology and Security Overview*, available at http://www.ericstates.org/images/documents/ERIC_Tech_and_Security_Brief_v2.1.pdf (last accessed Mar. 20, 2017).

[19] *Id.*

Using advanced algorithms, ERIC compares databases from its members and determines inaccuracies in states' voting lists — who has moved *inter*state and *intra*state, who has died, and who is eligible to vote, but is not yet registered.[20]

ERIC then makes a report available to the states so that: 1) supervisors of elections can confirm the eligibility of a voter and accuracy of the voter roll and, if necessary, either remove the voter or correct the inaccuracy on the roll, as appropriate (ERIC does not purge voters from individual states' registration rolls); and, 2) the State can send voter registration forms to age-eligible voters before the voter registration closing date for the next federal election.[21]

III. Effect of Proposed Changes:

The bill authorizes the Secretary, as he or she deems necessary, to enter into agreements or to join nongovernmental entities whose membership is composed entirely of state elections officials, to share information or data with other states in order to maintain the statewide voter registration system. The bill requires that the Secretary of State, or his or her designee, must serve as a full, voting member on the board of directors of any nongovernmental entity that Florida joins. However, such agreements or entities cannot be operated or controlled by the federal government. Additionally, Florida must be allowed to withdraw from such agreements or entities at any time. The bill directs the Secretary to use that data to identify registered voters or applications for voter registration that would be potentially ineligible to vote based on current law.

The bill also provides that all states and nongovernmental entities that receive personal information maintain the confidentiality of information or data given as part of the agreement, if that information or data was confidential in its state of origin.

The bill requires an annual report to the Governor, President of the Senate, and Speaker of the House describing the agreement and providing information on the number of registered voters removed from the Florida Voter Registration system, as well as the reason for the removal.

The Secretary of State will be authorized to join ERIC,[22] in order to: 1) better identify problem voter records in the statewide registration database that the supervisors of elections can either remove, if they are determined to be invalid, or correct; and 2) identify potential voters who the State can contact to register to vote. If Florida joins ERIC, the Secretary of State, or his or her designee, must serve on ERIC's Board of Directors. As mentioned above, this same requirement concerning service on the board of directors applies to any nongovernmental entity composed

[20] Common Cause, *ERIC Fact Sheet*, Massachusetts Legislature HB 582 (Rep. Moran, 2015-2016, 189th General Court), available at, http://www.commoncause.org/states/massachusetts/issues/voting-and-elections/electronic-registration-information-center/ccma-eric-factsheet-final.pdf (last accessed Mar. 20, 2017).

[21] http://www.ericstates.org/faq; *see also*, ERIC Bylaws, Membership Agreement (Exhibit A), § 5a.,b. (last updated October 28, 2015), available at http://www.ericstates.org/images/documents/ERIC_Bylaws_10-28-2015.pdf (last visited Mar. 20, 2017). It is important to note that when online voter registration "goes live" in October 2017, the Supervisors of Elections will not necessarily need to print and mail a Florida Voter Registration Application. The Supervisor could instead simply include the website address for the online voter registration system to potential voters.

[22] While most of the discussion concerning this legislation revolves around whether Florida will join ERIC, technically the bill will allow Florida to enter into other similar agreements with other states as well.

solely of elections officials that Florida may agree to join in sharing information for voter registration list maintenance activities.

Information provided to committee staff from ERIC on an initial set of Florida reports *projects* the following numbers:[23]

- *Intra*state voters: 717,000 voters who have moved within Florida but haven't updated their voter records;
- *Inter*state voters: 233,000 *inter*state voters with out-of date records because the voter moved to another state;
- Deceased voters: 24,000 voters still on the rolls;
- Duplicates: 17,000 duplicate registrations in the statewide database; and,
- Potential Voter Registrants: 4.5 million eligible voters in the motor vehicles database to be contacted to register to vote.

ERIC caveats their numbers by stating that they are based on the "averages" of what other member states have experienced, but also indicates that their projections "have so far proven to be reliable predictors" of the number of records that show up on initial reports.

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Article VII, s. 18(d) of the Florida Constitution provides, in pertinent part laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the mandate requirements of this section.

An exemption from the mandates provision may apply if the expected fiscal impact on municipalities/counties is less than $2 million. Because the fiscal impact on counties is anticipated to be less than $2 million, the bill appears to be exempt from the mandate requirements.

[23] FSASE, 2017 Legislative Issues, (Page entitled ERIC at Work), available at, http://www.myfloridaelections.com/portals/fsase/Documents/Public%20Policy/2017_FSASE_Legislative_Priorities.pdf (last accessed (Mar. 20, 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:

None.

C. Government Sector Impact:

Local Government/Expenditures

County supervisors of elections may incur expenses related to maintenance activity associated by the receipt of information from ERIC, including outreach to voters to confirm addresses or eligibility. However, they may also incur cost savings due to more efficient processes and reliable sources of data to maintain the voter rolls over the long term. The actual expenses and cost savings are indeterminate.

State Government

Expenditures/non-recurring

If the DOS elects to participate in the program, the department will incur the one-time membership fee of $25,000. In addition, each ERIC member pays annual dues which are determined by a formula set by the Board of Directors, with larger states paying a bit more than smaller states. While the precise amount of dues is indeterminate and will vary from year-to-year, this amount is likely to be no more than about $50,000-$75,000/year, based on ERIC's projected budget of $785,000 for FY 2016-17 (for the current 20 members).[24]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[24] http://www.ericstates.org/faq

VIII. Statutes Affected:

This bill substantially amends section 97.012 of the Florida Statutes.

IX. Additional Information:

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

CS by Ethics and Elections on April 4, 2017:
The Committee Substitute differs from the original bill in that it:

- Moves the authorization to join interstate agreements and nongovernmental entities whose membership is composed solely of elections officials for purposes of voter list maintenance activities from s. 97.012, F.S. (relating to the duties of the Secretary of State) to s. 98.075, F.S. (relating to voter registration list maintenance activities and ineligibility determinations);
- Authorizes the Department of State to participate in such agreements or entities so long as they are not operated or controlled by the federal government or any entity on behalf of the federal government;
- If the Department enters an interstate agreement or agrees to join a nongovernmental entity, the agreement must allow the Department to withdraw from the agreement or entities at any time;
- Requires an annual report to the Governor, President of the Senate, and Speaker of the House describing the agreement and providing information on the number of registered voters removed from the Florida Voter Registration system, as well as the reason for the removal;
- Requires each member, and the entity, to agree to maintain personal information such as social security numbers confidential according to the laws of the state that supplies that information; and,
- Requires the Secretary or his or her designee to be a full voting member of the board of directors of any non-governmental entity it joins for the purposes of exchange information to improve voter list maintenance activities.

B. Amendments:

None.

By the Committee on Ethics and Elections; and Senator Hutson

582-03402-17 20171070c1

A bill to be entitled

An act relating to voter registration list maintenance; amending s. 98.075, F.S.; authorizing the Department of State to enter into certain interstate agreements or become a member of a nongovernmental entity to verify voter registration information; requiring the department to share certain information with supervisors of elections; establishing requirements for participation in such agreements or memberships; establishing reporting requirements; providing an effective date.

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

Section 1. Subsection (2) of section 98.075, Florida Statutes, is amended to read:

98.075 Registration records maintenance activities; ineligibility determinations.—

(2) DUPLICATE REGISTRATION.—

(a) The department shall identify those voters who are registered more than once within the state or those applicants whose registration applications within the state would result in duplicate registrations. The most recent application shall be deemed an update to the voter registration record.

(b)1. The department may enter into interstate agreements or become a member of a nongovernmental entity whose membership is composed solely of state government election officials if the sole purpose of the agreement or membership is to share and exchange information in order to verify voter registration

582-03402-17 20171070c1

information. If the department intends to become a member of such a nongovernmental entity, the agreement to join the entity must require that the Secretary of State, or his or her designee, serve as a full member with voting rights on the nongovernmental entity's board of directors. The department shall provide information it receives as a result of the agreements or memberships to the supervisors to conduct registration list maintenance activities.

2. If the department enters into an interstate agreement or becomes a member of a nongovernmental entity pursuant to subparagraph 1., each state that is a participant in the agreement or a member of the nongovernmental entity must agree to maintain the confidentiality of personal information as required by the laws of the state supplying the information to the entity or participating states. The bylaws of a nongovernmental entity must also contain a provision requiring member states and the entity to maintain the confidentiality of personal information as required by the laws of the state supplying the information to the entity.

3. The department may only participate in an interstate agreement or become a member of a nongovernmental entity as provided in subparagraph 1. if the agreement or entity is controlled and operated by the participating states. The interstate agreement or entity may not be operated or controlled by the Federal Government or any other entity acting on behalf of the Federal Government. The department must be able to withdraw at any time from any interstate agreement or membership entered into.

4. If the department enters into an interstate agreement or

becomes a member of a nongovernmental entity as provided in subparagraph 1., the department must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1 of each year. The report must describe the agreement or membership and provide information on the total number of voters removed from the voter registration system as a result of the agreement or membership and the reasons for their removal.

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 6, 2017

I respectfully request that **Senate Bill #1070**, relating to Secretary of State, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2014
Meeting Date

1070
Bill Number (if applicable)

Topic Election Registration

Amendment Barcode (if applicable)

Name MARILYNN WILLS

Job Title

Address 2326 KILKENNY DR WEST
Street

Phone 850 893-4104

TALLAHASSEE FL 32309
City *State* *Zip*

Email marilynnwills@msn.com

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.

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)

4/25/17
Meeting Date

1070
Bill Number (if applicable)

Topic VOTER REGISTRATION

Amendment Barcode (if applicable)

Name DON LASASKY

Job Title

Address 225 S. ADAMS ST
Street

TALL FL 32302
City *State* *Zip*

Phone 850-222-7668

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL. STATE ASSOC. OF SUPERVISORS OF ELECTIONS

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/SB 916 (188616)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Senators Grimsley and Stargel
SUBJECT:	Statewide Medicaid Managed Care Program
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Forbes	Williams	AHS	**Recommend: Fav/CS**
3.	Forbes	Hansen	AP	**Pre-meeting**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 916 modifies the Statewide Medicaid Managed Care program (SMMC) and deletes obsolete provisions from the implementation of the program. The bill specifically:

- Deletes the fee-for-service reimbursement option for provider service networks (PSNs);
- Revises the requirements for the contents of the databook used for rate setting to be consistent with actuarial rate-setting practices and standards;
- Collapses regions, re-groups counties within new regions, and revises the plan limitations within the regions for the procurement process for the Medicaid Managed Medical Assistance (MMA) and Long-Term Care (LTC) components; and
- Removes obsolete provisions.

The bill has no impact on state revenues or expenditures.

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

II. Present Situation:

Florida Medicaid

The Medicaid program is a partnership between the federal and state governments to provide medical care to low income pregnant women, 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 healthcare delivery system. Medicaid currently is the second largest expenditure in Florida's budget behind education and covers 20 percent of all Floridians, including:

- 47 percent of Florida's children;
- 63 percent of Florida's births; and
- 61 percent of Florida's nursing home days.[1]

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).

Florida's Current Medicaid and CHIP Eligibility Levels in Florida[2]
(With Income Disregards and Modified Adjusted Gross Income)

Children's Medicaid			CHIP (Kidcare)	Pregnant Women	Parents Caretaker Relatives	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.[3]

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.[4] Applicants must also agree to cooperate with Child Support Enforcement during the application process.[5]

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[1] Agency for Health Care Admin., Senate Health and Human Services Appropriations Subcommittee 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. 14, 2017).
[2] 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. 14, 2017).
[3] *See* s. 409.963, F.S.
[4] Florida Dep't of Children and Families, *Family-Related Medicaid Programs Fact Sheet*, p. 3 (April 2016), http://www.dcf.state.fl.us/programs/access/docs/Family-RelatedMedicaidFactSheet.pdf (last visited Mar. 15, 2017).
[5] Id.

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).

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.[6] States can add benefits, pending federal approval. Florida has added benefits, including prescription drugs, adult dental services, and dialysis.[7] 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.[8]

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 that implemented the Statewide Medicaid Managed Care (SMMC) program. Current federal law requires the state to obtain a waiver to implement managed care. Through these waivers, the 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 currently designed for the AHCA to issue invitations to negotiate (ITN) 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 11 regions reflect areas that were initially set by the original Department of Health and Rehabilitative Services which was re-organized and downsized into several smaller agencies in the 1990s.

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.[9]

The LTC component began enrolling in August 2013 and completed its statewide roll-out in March 2014. The MMA component began enrolling Medicaid recipients in May 2014 and

[6] Section 409.905, F.S.
[7] Section 409.906, F.S.
[8] *See* Section 1905 9(r) of the Social Security Act.
[9] 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.

finished its roll-out in August 2014. These contracts will be re-procured in 2017 with contract execution and implementation expected during the last part of 2018, according to the AHCA.

The chart below shows the enrollment in each of these components as of March 1, 2017:

Statewide Medicaid Managed Care - March 2017			
Component	**Enrollment Start Date**	**Budget[10]**	**Enrollment[11] *(as of Mar. 2017)***
Long-Term Care Plan	August 2013	$3.97 billion	94,803
Managed Medical Assistance	May 2014	$14.4 billion	3,233,235

The LTC program provides services in two settings: nursing facilities or home and community based services (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 are delivered through waivers and are dependent on the availability of annual funding in the general appropriations act (GAA).

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.[12] 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 under s. 409.904, F.S.

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 the LTC component.[13] 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.

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

[10] 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. 14, 2017).
[11] Agency for Health Care Administration, *SMMC MMA Enrollment by County by Plan* (As of Mar. 1, 2017), http://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited Mar. 14, 2017).
[12] Letter from U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services to Beth Kidder, Interim Deputy Secretary for Medicaid, Agency for Health Care Administration (Dec. 19, 2016), *available at http://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/LTC_Approval_Letter_2016-12-19.pdf* (last visited Mar. 14, 2017).
[13] Florida Dep't of Elderly Affairs, *Comprehensive Assessment and Review for Long-Term Care Services (CARES)*, http://elderaffairs.state.fl.us/doea/cares.php (last visited Mar. 14, 2017).

through the GAA to serve elders off the waitlist who have a priority score of 4 or higher.[14] Individuals who are more frail 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 prior enrollment into the HCBS portion of the program. Exemptions from the wait list also exist under s. 409.979(3)(f), F.S.

Individuals who are enrolled in the following programs may enroll in the LTC program, but are not required to:

- Developmental Disabilities waiver program;
- Traumatic Brain and Spinal Injury waiver;
- Project AIDS Care waiver;
- Adult Cystic Fibrosis waiver;
- Program of All-Inclusive Care for the Elderly (PACE);
- Familial Dysautonomia waiver; or
- Model waiver.[15]

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.[16]

Delivery System and Benefits

The AHCA conducted a competitive procurement to select LTC and MMA plans in each of the 11 regions in 2012. Under the Invitation to Negotiate for MMA plans, the AHCA selected 10 different companies to serve as the health care delivery system. Of the plans selected, 11 of the awarded contracts went to general, non-specialty plans, of which five were PSNs.[17] Five different specialty plans and the Children's Medical Services plan were also awarded contracts.[18,19] Currently, MMA recipients receive services through 11 different managed care plans, of which two are PSNs.

In 2012, the AHCA awarded seven LTC contracts, including one statewide contract.[20] One of the original LTC contracts operated as a PSN; however, that plan is no longer participating in SMMC. The LTC services are now delivered through six managed care plans, which vary based

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[14] *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, GAA provided funding during first year of the LTCMC program for those on the wait list with priority scores of 5 or higher. (Ch. Law 2013-40, line item 414).

[15] *Id.*

[16] 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. 15, 2017).

[17] Agency for Health Care Admin., *Florida Managed Medical Assistance Program - 1115 Research and Demonstration Waiver (3rd Quarter Progress Report: January 1, 2014 - March 31, 2014),* p. 15, (on file with the Senate Committee on Health Policy).

[18] *Id.*

[19] Agency for Health Care Administration, *Medicaid and Managed Care* (Sept. 3, 2014), http://ahca.myflorida.com/Medicaid/recent_presentations/Child_Protection_Summit_2014-09-03.pdf (last visited Mar. 20, 2017).

[20] Agency for Health Care Administration, *Statewide Medicaid Managed Care Update* (Oct. 8, 2013) (on file with the Senate Committee on Health Policy).

on the recipient's region. Each region has at least two plans to allow for recipient choice. For nursing facilities and hospices, the plans are required to pay those designated providers a rate set by the AHCA. All six of the LTC plans also participate in the MMA program.

In addition to these plans, there are six specialty plans that serve unique populations: Children's Medical Services for children with chronic conditions; two plans for individuals with HIV/AIDS; a plan for child welfare enrollees; a plan for recipients eligible for both Medicaid and Medicare with chronic conditions, such as diabetes or congestive heart failure; and a plan for individuals with serious mental illness. Recipients in both components of the program receive choice counseling services to assist them in selecting the plan that will best meet their needs.

The total enrollment in the specialty plans as of March 1, 2017 is shown in the chart below:[21]

Specialty Plan Enrollment - March 2017	
Component	**Enrollment (As of March 1, 2017)**
Child Welfare Plan	31,810
Specialty Plans (Capitated)	78,842
Children's Medical Services Network	50,924
Total:	**161,576**

The managed care plans under both components are required to cover a minimum level of benefits as prescribed under s. 409.973, F.S., for the MMA plans, and s. 409.98, F.S., for the LTC plans. However, the statutes also permit the plans to offer an expanded menu of optional benefits.

Mandatory Benefits - Statewide Medicaid Managed Care	
Managed Medical Assistance	**Long-Term Care**
Advanced registered nurse practitioner services	Nursing facility care
Ambulatory surgical treatment center services	Services provided in assisted living facility
Birthing center services	Hospice
Chiropractic services	Adult day care
Dental services	Medical equipment and supplies, including incontinence supplies
Early periodic screening diagnostic and treatment services for recipients under age 21	Personal care
Emergency services	Home accessibility adaption
Family planning services and supplies	Behavior management
Healthy Start services (with exceptions)	Home-delivered meals
Hearing services	Case management
Home health agency services	Therapies
Hospice services	Occupational therapy
Hospital inpatient services	Speech therapy

[21] Agency for Health Care Administration, SMMC MMA Specialty Capitated Enrollment Report (As of Mar. 1, 2017).

Mandatory Benefits - Statewide Medicaid Managed Care	
Managed Medical Assistance	**Long-Term Care**
Hospital outpatient services	Respiratory therapy
Laboratory and imaging services	Physical therapy
Medical supplies, equipment, prostheses, and orthoses	Intermittent and skilled nursing
Mental health services	Medication administration
Nursing care	Medication management
Optical services and supplies	Nutritional assessment and risk reduction
Optometrist services	Caregiver training
Physical, occupational, respiratory, and speech therapy services	Respite care
Physician services, including physician assistant services	Transportation
Podiatric services	Personal emergency response system
Prescription drugs	
Renal dialysis services	
Respiratory equipment and supplies	
Rural health clinic services	
Substance abuse treatment services	
Transportation to access covered services	

The 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 elect the same managed care plan for both components. These plans are referred to as comprehensive plans.

Provider Service Networks

The payment design of the SMMC was intended to facilitate a smooth transition from a mix of fee-for-service, primary care case management, and managed care delivery to a statewide system of Medicaid managed care. The statute permitted the PSNs to be reimbursed on a fee-for-service or prepaid basis, but only for the first two years of the plan's operation or until the contract year beginning September 1, 2014, whichever is later. The AHCA is required to conduct cost reconciliations for the fee-for-service PSNs to determine cost reconciliations. All other managed care plans under SMMC are paid on a capitated basis meaning that a plan must pay for all covered services under the contract regardless of whether the capitated rate covers the cost of services for that recipient.

During the procurement process, at least one of the contract awards must be to a PSN if any PSNs submit a responsive bid. However, the AHCA must also issue an additional ITN following the end of a procurement, only for provider service networks, in those regions where no provider service networks submitted a responsive bid.

III. Effect of Proposed Changes:

Provider Service Networks (Sections 1, 3, 4, 6, 7, and 8)

The bill removes the option for PSNs, under both the MMA and LTC components, to be reimbursed on a fee-for-service basis. Prepaid PSNs shall be reimbursed only on a per-member, per month basis. Currently, PSNs could elect to receive payments for the first 2 years of a contract or until the contract year beginning September 1, 2014, whichever is later, under fee-for-service or on a capitated basis. The bill also deletes provisions relating to quality selection criteria specific to savings under PSNs, which are calculated under fee-for-service rates.

The reconciliation and cost savings review process sections relating to the PSN fee-for-service payment process are deleted from the MMA and LTC sections of the SMMC program. Provisions relating to how the cost reconciliations shall be conducted and the reconciliation deadline are removed to correspond to the removal of those now obsolete provisions.

The ITN process for both the MMA and LTC components is modified to no longer require the AHCA to conduct a separate procurement process within 12 months of the initial procurement process if no PSN is selected during the initial procurement.

Managed Care Plan Selection (Sections 3, 6, and 8)

The bill modifies the AHCA's responsibilities for compiling and publishing a databook as part of the ITN process to require a comprehensive set of utilization and spending data that is consistent with actuarial rate-setting practices and standards. The modification eliminates specific requirements that the data include the three most recent contract years for all Medicaid recipients by region or county. The source of the data in the databook report must include the most recent 24 months of validated data from the Medicaid Encounter Data System. The health care delivery regions for both the MMA and LTC components are also collapsed and changed to letters from numbers. These modifications provide for administrative streamlining and will enhance plan stability through increased market share by the plans, according to the AHCA. Since the original regions were created in the 1990s, the AHCA believes these revised regions more accurately reflect the health care market and current utilization patterns.[22] The larger regions will also assist the AHCA in ensuring compliance with the access and appointment standards by the managed care plans as a wider choice of plans is likely to be available to recipients. The pooling of additional membership across the collapsed regions will likely draw more interested parties to some of the less populated areas of the state.

The table below shows the proposed re-groupings of counties and the minimum and maximum number of plans for the procurement. The same range of plan limitations apply for MMA and LTC.

[22] Agency for Health Care Administration, *Senate Bill 916 Analysis* (Feb. 24, 2017), p. 3, (on file with the Senate Committee on Health Policy).

Proposed Region Changes and Plan Limitations							
Current Region	***Counties***	***Plan Min.***	***Plan Max.***	***New Region***	***Counties***	***Plan Min.***	***Plan Max.***
1	*Escambia, Okaloosa, Santa Rosa, Walton*	*2*	*0*	***A***	*Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, Washington*	*3*	*4*
2	*Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, Wakulla, Washington*	*2*	*0*	***B***	*Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, Union, Volusia*	*3*	*6*
3	*Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Putnam, Sumter, Suwannee, Union*	*3*	*5*	***C***	*Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, Polk*	*5*	*10*
4	*Baker, Clay, Duval, Flagler, Nassau, St. Johns, Volusia*	*3*	*5*	***D***	*Brevard, Orange, Osceola, Seminole*	*3*	*6*
5	*Pasco, Pinellas*	*2*	*4*	***E***	*Charlotte, Collier, Desoto, Glades, Hendry, Lee, Sarasota*	*3*	*4*
6	*Hardee, Highlands, Hillsborough, Manatee, Polk*	*4*	*7*	***F***	*Indian River, Martin, Okeechobee, Palm Beach, St. Lucie*	*3*	*5*
7	*Brevard, Orange, Osceola, Seminole*	*3*	*6*	***G***	*Broward*	*3*	*6*
8	*Charlotte, Collier, Desoto, Glades, Hendry, Lee, Sarasota*	*2*	*4*	***H***	*Miami-Dade and Monroe*	*5*	*10*
9	*Indian River, Martin, Okeechobee, Palm Beach, St. Lucie*	*2*	*4*				
10	*Broward*	*2*	*4*				
11	*Miami-Dade, Monroe*	*5*	*10*				

Obsolete Language (Sections 2, 5, 6, and 7)

Sections 2, 5, 6, and 7 amend ss. 409.964, 409.971, and 409.974(1), and 409.978(1), F.S., respectively, to remove obsolete language. These sections contain references to dates or activities associated with program implementation, the initial procurement process, and expired deadlines.

Effective Date (Section 9)

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:

This bill reorganizes the regions and the number of plans that may be selected in each region. The AHCA plans to re-procure the SMMC contracts in late 2017 giving the health plan industry, both those currently with contracts and those who wish to gain a contract, an opportunity to bid on the new ITN. The AHCA believes that collapsing regions will result in administrative streamlining and more accurately reflects today's health care utilization patterns. These changes may result in more competitive proposals from more managed care organizations during the upcoming procurement process, resulting in savings to the state and more choices for the consumer. In response to a voluntary Intent to Bid request, the AHCA received 41 responses from PSNs and HMOs that were interested in all three types of plans: long-term care, specialty, and managed medical assistance.[23]

Any changes in which managed care organizations receive contracts under a new procurement will impact the health care provider community in 2017 and 2018. Not only will Medicaid managed care enrollees possibly be transitioning to new providers, but the provider community may have to adapt to a new group of managed care plans.

C. Government Sector Impact:

According to the AHCA, the bill has no impact on state revenues or expenditures.[24] However, the AHCA also believes, and notes in its bill analyses that collapsing regions will result in administrative streamlining and that these new regions will more accurately

[23] Agency for Health Administration, *Statewide Medicaid Managed Care (SMMC) 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. 16, 2017).
[24] *Supra* note 20, at 4.

reflect today's health care utilization patterns. These changes in the regions may result in more competitive proposals from more managed care organizations during the upcoming procurement process, resulting in additional savings to the state and more choices for the consumer.

VI. Technical Deficiencies:

Strike the word, "Prepaid" from line 101.

VII. Related Issues:

The AHCA plans to release an ITN in the summer of 2017. Non-binding letters of Intent to Bid were requested from interested bidders by February 13, 2017, using the current 11 regions.[25] With changes to the current business process, an effective date of July 1, 2017, may keep the AHCA from maintaining their current deadlines.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.912, 409.964, 409.966, 409.968, 409.971, 409.974, 409.978, and 409.981.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Health and Human Services on April 13, 2017:
The committee substitute:

- Requires that when selecting a plan for participation in the Medicaid program, the agency compile and publish a databook consisting of a comprehensive set of utilization and spending data consistent with actuarial rate-setting practices and standards. The source of the data in the databook report must include the most recent 24 months of validated data from the Medicaid Encounter Data System.
- Changes the following regions to the a new structure for the Managed medical assistance program: At least three plans and up to four plans for Region A; at least three plans and up to six plans for Region B; at least five and up to 10 plans for Region C; at least three and up to four plans for Region E; at least three plans and up to five plans for Region F; and at least three plans and up to five six plans for Region G.
- Changes the following regions to a new structure for the long-term care managed care program: At least three plans and up to four plans for Region A; at least three plans and up to six plans for Region B; at least five and up to eight plans for Region C; at least three and up to four plans for Region E; at least three plans and up to five plans for Region F; and at least three and up to four plans for Region G.

[25] Agency for Health Care Administration, *Non-binding Letters of Intent from Potential SMMC Plans,* http://ahca.myflorida.com/medicaid/statewide_mc/SMMC_LOI.shtml (last visited Mar. 16, 2017).

B. Amendments:

None.

565904

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/27/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Braynon) recommended the following:

Senate Amendment (with title amendment)

Delete lines 153 - 165

and insert:

term care services. ~~The agency shall apply for and implement state plan amendments or waivers of applicable federal laws and regulations necessary to implement the program.~~ Before seeking a new waiver or an amendment to an existing waiver, the agency shall provide public notice and the opportunity for public comment and include public feedback in the waiver or waiver

565904

amendment application. The agency shall hold one public meeting in each of the regions described in s. 409.966(2), and the ~~time~~ period for public comment for each region shall end no sooner than 30 days after the completion of the public meeting in that region. The agency shall obtain the approval of the Legislature before submitting or implementing ~~submit~~ any state plan amendments, new waiver requests, or requests for extensions or expansions for existing waivers~~, needed to implement the managed care program by August 1, 2011~~.

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

And the title is amended as follows:

Delete lines 6 - 17

and insert:

409.964, F.S.; requiring the Agency for Health Care Administration to provide public notice and an opportunity for public comment before seeking new waivers or amendments to existing waivers; requiring the agency to obtain legislative approval before submitting or implementing state plan amendments or requesting certain waivers or extensions or expansions for existing waivers; deleting obsolete language; amending s. 409.966, F.S.; requiring that a required databook consist of data that is consistent with actuarial rate-setting practices and standards; requiring that the source of such data include the 24 most recent months of validated data from the Medicaid Encounter Data System; deleting provisions relating to a report and report requirements; revising the

565904

designation and county makeup of regions of the state for purposes of procuring health plans that may participate in the Medicaid program; adding a factor that the agency must

424586

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/27/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Braynon) recommended the following:

Senate Substitute for Amendment (565904) (with title amendment)

Delete lines 162 - 165
and insert:
region. The agency shall obtain the approval of the Legislature before submitting or implementing ~~submit~~ any state plan amendments, new waiver requests, or requests for extensions or expansions for existing waivers which would reduce current Medicaid eligibility levels; reduce, ~~needed to implement the~~

424586

~~managed care~~ limit, or eliminate mandatory or optional services; impose premiums or additional copayments; or institute block grants or per capita caps in the Medicaid program ~~by August 1, 2011~~.

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

And the title is amended as follows:

Delete line 6

and insert:

409.964, F.S.; requiring the Agency for Health Care Administration to obtain legislative approval before submitting or implementing state plan amendments or waivers or requests for extensions or expansions of existing waivers in certain circumstances; deleting an obsolete provision;

188616

576-03815-17

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to the statewide Medicaid managed care program; amending s. 409.912, F.S.; deleting the fee-for-service option as a basis for the reimbursement of Medicaid provider service networks; amending s. 409.964, F.S.; deleting an obsolete provision; amending s. 409.966, F.S.; requiring that a required databook consist of data that is consistent with actuarial rate-setting practices and standards; requiring that the source of such data include the 24 most recent months of validated data from the Medicaid Encounter Data System; deleting provisions relating to a report and report requirements; revising the designation and county makeup of regions of the state for purposes of procuring health plans that may participate in the Medicaid program; adding a factor that the Agency for Health Care Administration must consider in the selection of eligible plans; deleting a requirement related to fee-for-service provider service networks; amending s. 409.968, F.S.; requiring provider service networks to be prepaid plans; deleting a fee-for-service option for Medicaid reimbursement for provider service networks; amending s. 409.971, F.S.; deleting an obsolete provision; amending s. 409.974, F.S.; revising the number of eligible Medicaid health care plans the agency must procure for certain regions in the state; deleting an

188616

576-03815-17

obsolete provision; amending s. 409.978, F.S.; deleting an obsolete provision; amending s. 409.981, F.S.; revising the number of eligible Medicaid health care plans the agency must procure for certain regions in the state; deleting a requirement that the agency consider a specific factor relating to the selection of managed medical assistance plans; providing an effective date.

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

Section 1. Subsection (2) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician’s opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. s. 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed

continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance

standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers are not entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(2) The agency may contract with a provider service network~~, which may be reimbursed on a fee-for-service or prepaid basis~~. Prepaid provider service networks shall receive per-member, per-month payments. ~~A provider service network that does not choose to be a prepaid plan shall receive fee-for-service rates with a shared savings settlement. The fee-for-service option shall be available to a provider service network only for the first 2 years of the plan's operation or until the contract year beginning September 1, 2014, whichever is later. The agency shall annually conduct cost reconciliations to determine the amount of cost savings achieved by fee-for-service provider service networks for the dates of service in the period being~~

~~reconciled. Only payments for covered services for dates of service within the reconciliation period and paid within 6 months after the last date of service in the reconciliation period shall be included. The agency shall perform the necessary adjustments for the inclusion of claims incurred but not reported within the reconciliation for claims that could be received and paid by the agency after the 6-month claims processing time lag. The agency shall provide the results of the reconciliations to the fee-for-service provider service networks within 45 days after the end of the reconciliation period. The fee-for-service provider service networks shall review and provide written comments or a letter of concurrence to the agency within 45 days after receipt of the reconciliation results. This reconciliation shall be considered final.~~

(a) A provider service network that ~~which~~ is reimbursed by the agency on a prepaid basis shall be exempt from parts I and III of chapter 641, but must comply with the solvency requirements in s. 641.2261(2) and meet appropriate financial reserve, quality assurance, and patient rights requirements as established by the agency.

(b) A provider service network is a network established or organized and operated by a health care provider, or group of affiliated health care providers, which provides a substantial proportion of the health care items and services under a contract directly through the provider or affiliated group of providers and may make arrangements with physicians or other health care professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the

provision of basic health services by the physicians, by other health professionals, or through the institutions. The health care providers must have a controlling interest in the governing body of the provider service network organization.

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 managed care program for all covered services, including long-term care services. The agency shall apply for and implement state plan amendments or waivers of applicable federal laws and regulations necessary to implement the program. Before seeking a waiver, the agency shall provide public notice and the opportunity for public comment and include public feedback in the waiver application. The agency shall hold one public meeting in each of the regions described in s. 409.966(2), and the ~~time~~ period for public comment for each region shall end no sooner than 30 days after the completion of the public meeting in that region. ~~The agency shall submit any state plan amendments, new waiver requests, or requests for extensions or expansions for existing waivers, needed to implement the managed care program by August 1, 2011.~~

Section 3. Subsection (2) and paragraphs (a), (d), and (e) of subsection (3) of section 409.966, Florida Statutes, are amended to read:

409.966 Eligible plans; selection.—

(2) ELIGIBLE PLAN SELECTION.—The agency shall select a limited number of eligible plans to participate in the Medicaid program using invitations to negotiate in accordance with s.

287.057(1)(c). At least 90 days before issuing an invitation to negotiate, the agency shall compile and publish a databook consisting of a comprehensive set of utilization and spending data consistent with actuarial rate-setting practices and standards ~~for the 3 most recent contract years consistent with the rate-setting periods for all Medicaid recipients by region or county~~. The source of the data in the databook ~~report~~ must include the 24 most recent months of ~~both historic fee-for-service claims and~~ validated data from the Medicaid Encounter Data System. ~~The report must be available in electronic form and delineate utilization use by age, gender, eligibility group, geographic area, and aggregate clinical risk score~~. Separate and simultaneous procurements shall be conducted in each of the following regions:

(a) Region A ~~Region 1~~, which consists of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, ~~and~~ Walton, and Washington Counties.

(b) Region B ~~Region 2~~, which consists of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, Union, and Volusia ~~Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, Wakulla, and Washington~~ Counties.

(c) Region C ~~Region 3~~, which consists of Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, and Polk ~~Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Putnam, Sumter, Suwannee, and Union~~ Counties.

(d) Region D ~~Region 4~~, which consists of Brevard, Orange, Osceola, and Seminole ~~Baker, Clay, Duval, Flagler, Nassau, St. Johns, and Volusia~~ Counties.

(e) Region E ~~Region 5~~, which consists of Charlotte, Collier, DeSoto, Glades, Hendry, Lee, and Sarasota ~~Pasco and Pinellas~~ Counties.

(f) Region F ~~Region 6~~, which consists of Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie ~~Hardee, Highlands, Hillsborough, Manatee, and Polk~~ Counties.

(g) Region G ~~Region 7~~, which consists of Broward County ~~Brevard, Orange, Osceola, and Seminole Counties~~.

(h) Region H ~~Region 8~~, which consists of Miami-Dade and Monroe ~~Charlotte, Collier, DeSoto, Glades, Hendry, Lee, and Sarasota~~ Counties.

~~(i) Region 9, which consists of Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie Counties.~~

~~(j) Region 10, which consists of Broward County.~~

~~(k) Region 11, which consists of Miami-Dade and Monroe Counties.~~

(3) QUALITY SELECTION CRITERIA.—

(a) The invitation to negotiate must specify the criteria and the relative weight of the criteria that will be used for determining the acceptability of the reply and guiding the selection of the organizations with which the agency negotiates. In addition to criteria established by the agency, the agency shall consider the following factors in the selection of eligible plans:

1. Accreditation by the National Committee for Quality

Assurance, the Joint Commission, or another nationally recognized accrediting body.

2. Experience serving similar populations, including the organization's record in achieving specific quality standards with similar populations.

3. Availability and accessibility of primary care and specialty physicians in the provider network.

4. Establishment of community partnerships with providers that create opportunities for reinvestment in community-based services.

5. Organization commitment to quality improvement and documentation of achievements in specific quality improvement projects, including active involvement by organization leadership.

6. Provision of additional benefits, particularly dental care and disease management, and other initiatives that improve health outcomes.

7. Evidence that an eligible plan has written agreements or signed contracts or has made substantial progress in establishing relationships with providers before the plan submitting a response.

8. Comments submitted in writing by any enrolled Medicaid provider relating to a specifically identified plan participating in the procurement in the same region as the submitting provider.

9. Documentation of policies and procedures for preventing fraud and abuse.

10. The business relationship an eligible plan has with any other eligible plan that responds to the invitation to

negotiate.

11. Whether a plan is proposing to establish a comprehensive long-term care plan.

(d) For the first year of the first contract term, the agency shall negotiate capitation rates or fee for service payments with each plan in order to guarantee aggregate savings of at least 5 percent.

~~1.~~ For prepaid plans, determination of the amount of savings shall be calculated by comparison to the Medicaid rates that the agency paid managed care plans for similar populations in the same areas in the prior year. In regions containing no prepaid plans in the prior year, determination of the amount of savings shall be calculated by comparison to the Medicaid rates established and certified for those regions in the prior year.

~~2. For provider service networks operating on a fee-for-service basis, determination of the amount of savings shall be calculated by comparison to the Medicaid rates that the agency paid on a fee-for-service basis for the same services in the prior year.~~

(e) To ensure managed care plan participation in Regions A and E ~~Regions 1 and 2~~, the agency shall award an additional contract to each plan with a contract award in Region A ~~Region 1~~ or Region E ~~Region 2~~. Such contract shall be in any other region in which the plan submitted a responsive bid and negotiates a rate acceptable to the agency. If a plan that is awarded an additional contract pursuant to this paragraph is subject to penalties pursuant to s. 409.967(2)(i) for activities in Region A ~~Region 1~~ or Region E ~~Region 2~~, the additional contract is automatically terminated 180 days after the imposition of the

penalties. The plan must reimburse the agency for the cost of enrollment changes and other transition activities.

Section 4. Subsection (2) of section 409.968, Florida Statutes, is amended to read:

409.968 Managed care plan payments.—

(2) Provider service networks shall ~~may~~ be prepaid plans and receive per-member, per-month payments negotiated pursuant to the procurement process described in s. 409.966. ~~Provider service networks that choose not to be prepaid plans shall receive fee-for-service rates with a shared savings settlement. The fee-for-service option shall be available to a provider service network only for the first 2 years of its operation. The agency shall annually conduct cost reconciliations to determine the amount of cost savings achieved by fee-for-service provider service networks for the dates of service within the period being reconciled. Only payments for covered services for dates of service within the reconciliation period and paid within 6 months after the last date of service in the reconciliation period must be included. The agency shall perform the necessary adjustments for the inclusion of claims incurred but not reported within the reconciliation period for claims that could be received and paid by the agency after the 6-month claims processing time lag. The agency shall provide the results of the reconciliations to the fee-for-service provider service networks within 45 days after the end of the reconciliation period. The fee-for-service provider service networks shall review and provide written comments or a letter of concurrence to the agency within 45 days after receipt of the reconciliation results. This reconciliation is considered final.~~

Section 5. Section 409.971, Florida Statutes, is amended to read:

409.971 Managed medical assistance program.—The agency shall make payments for primary and acute medical assistance and related services using a managed care model. ~~By January 1, 2013, the agency shall begin implementation of the statewide managed medical assistance program, with full implementation in all regions by October 1, 2014.~~

Section 6. Subsections (1) and (2) of section 409.974, Florida Statutes, are amended to read:

409.974 Eligible plans.—

(1) ELIGIBLE PLAN SELECTION.—The agency shall select eligible plans for the managed medical assistance program through the procurement process described in s. 409.966. ~~The agency shall notice invitations to negotiate no later than January 1, 2013.~~

(a) The agency shall procure at least three ~~two~~ plans and up to four plans for Region A ~~Region 1~~. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.

(b) The agency shall procure at least three plans and up to six ~~two~~ plans for Region B ~~Region 2~~. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.

(c) The agency shall procure at least five ~~three~~ plans and up to 10 ~~five~~ plans for Region C ~~Region 3~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(d) The agency shall procure at least three plans and up to

six ~~five~~ plans for Region D ~~Region 4~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(e) The agency shall procure at least three ~~two~~ plans and up to four plans for Region E ~~Region 5~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(f) The agency shall procure at least three ~~four~~ plans and up to five ~~seven~~ plans for Region F ~~Region 6~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(g) The agency shall procure at least three plans and up to five ~~six~~ plans for Region G ~~Region 7~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(h) The agency shall procure at least five ~~two~~ plans and up to 10 ~~four~~ plans for Region H ~~Region 8~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

~~(i) The agency shall procure at least two plans and up to four plans for Region 9. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(j) The agency shall procure at least two plans and up to four plans for Region 10. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(k) The agency shall procure at least five plans and up to 10 plans for Region 11. At least one plan must be a provider~~

~~service network if any provider service networks submit a responsive bid.~~

~~If no provider service network submits a responsive bid, the agency shall procure no more than one less than the maximum number of eligible plans permitted in that region. Within 12 months after the initial invitation to negotiate, the agency shall attempt to procure a provider service network. The agency shall notice another invitation to negotiate only with provider service networks in those regions where no provider service network has been selected.~~

(2) QUALITY SELECTION CRITERIA.—In addition to the criteria established in s. 409.966, the agency shall consider evidence that an eligible plan has written agreements or signed contracts or has made substantial progress in establishing relationships with providers before the plan submits ~~submitting~~ a response. The agency shall evaluate and give special weight to evidence of signed contracts with essential providers as defined by the agency pursuant to s. 409.975(1). The agency shall exercise a preference for plans with a provider network in which more than ~~over~~ 10 percent of the providers use electronic health records, as defined in s. 408.051. ~~When all other factors are equal, the agency shall consider whether the organization has a contract to provide managed long-term care services in the same region and shall exercise a preference for such plans.~~

Section 7. Subsection (1) of section 409.978, Florida Statutes, is amended to read:

409.978 Long-term care managed care program.—

(1) Pursuant to s. 409.963, the agency shall administer the

long-term care managed care program described in ss. 409.978-409.985, but may delegate specific duties and responsibilities for the program to the Department of Elderly Affairs and other state agencies. ~~By July 1, 2012, the agency shall begin implementation of the statewide long-term care managed care program, with full implementation in all regions by October 1, 2013.~~

Section 8. Subsection (2) and paragraphs (c), (d), and (e) of subsection (3) of section 409.981, Florida Statutes, are amended to read:

409.981 Eligible long-term care plans.—

(2) ELIGIBLE PLAN SELECTION.—The agency shall select eligible plans for the long-term care managed care program through the procurement process described in s. 409.966. The agency shall procure:

(a) At least three ~~two~~ plans and up to four plans for Region A ~~Region 1~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(b) At least three ~~Two~~ plans and up to six plans for Region B ~~Region 2~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(c) At least five ~~three~~ plans and up to eight ~~five~~ plans for Region C ~~Region 3~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(d) At least three plans and up to six ~~five~~ plans for Region D ~~Region 4~~. At least one plan must be a provider service network if any provider service network submits a responsive

bid.

(e) At least three ~~two~~ plans and up to four plans for Region E ~~Region 5~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(f) At least three ~~four~~ plans and up to five ~~seven~~ plans for Region F ~~Region 6~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(g) At least three plans and up to four ~~six~~ plans for Region G ~~Region 7~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(h) At least five ~~two~~ plans and up to 10 ~~four~~ plans for Region H ~~Region 8~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

~~(i) At least two plans and up to four plans for Region 9. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(j) At least two plans and up to four plans for Region 10. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(k) At least five plans and up to 10 plans for Region 11. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~If no provider service network submits a responsive bid in a region other than Region 1 or Region 2, the agency shall procure~~

~~no more than one less than the maximum number of eligible plans permitted in that region. Within 12 months after the initial invitation to negotiate, the agency shall attempt to procure a provider service network. The agency shall notice another invitation to negotiate only with provider service networks in regions where no provider service network has been selected.~~

(3) QUALITY SELECTION CRITERIA.—In addition to the criteria established in s. 409.966, the agency shall consider the following factors in the selection of eligible plans:

~~(c) Whether a plan is proposing to establish a comprehensive long-term care plan and whether the eligible plan has a contract to provide managed medical assistance services in the same region.~~

(c) ~~(d)~~ Whether a plan offers consumer-directed care services to enrollees pursuant to s. 409.221.

(d) ~~(c)~~ Whether a plan is proposing to provide home and community-based services in addition to the minimum benefits required by s. 409.98.

Section 9. 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/SB 916
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); and Senators Grimsley and Stargel
SUBJECT:	Statewide Medicaid Managed Care Program
DATE:	April 27, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	**Favorable**
2.	Forbes	Williams	AHS	**Recommend: Fav/CS**
3.	Forbes	Hansen	AP	**Fav/CS**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 916 modifies the Statewide Medicaid Managed Care program (SMMC) and deletes obsolete provisions from the implementation of the program. The bill specifically:

- Deletes the fee-for-service reimbursement option for provider service networks (PSNs);
- Revises the requirements for the contents of the databook used for rate setting to be consistent with actuarial rate-setting practices and standards;
- Collapses regions, re-groups counties within new regions, and revises the plan limitations within the regions for the procurement process for the Medicaid Managed Medical Assistance (MMA) and Long-Term Care (LTC) components; and
- Removes obsolete provisions.

The bill has no impact on state revenues or expenditures.

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

II. Present Situation:

Florida Medicaid

The Medicaid program is a partnership between the federal and state governments to provide medical care to low income pregnant women, 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 healthcare delivery system. Medicaid currently is the second largest expenditure in Florida's budget behind education and covers 20 percent of all Floridians, including:

- 47 percent of Florida's children;
- 63 percent of Florida's births; and
- 61 percent of Florida's nursing home days.[1]

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).

Florida's Current Medicaid and CHIP Eligibility Levels in Florida[2]
(With Income Disregards and Modified Adjusted Gross Income)

Children's Medicaid			CHIP (Kidcare)	Pregnant Women	Parents Caretaker Relatives	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.[3]

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.[4] Applicants must also agree to cooperate with Child Support Enforcement during the application process.[5]

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[1] Agency for Health Care Admin., Senate Health and Human Services Appropriations Subcommittee 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. 14, 2017).
[2] 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. 14, 2017).
[3] *See* s. 409.963, F.S.
[4] Florida Dep't of Children and Families, *Family-Related Medicaid Programs Fact Sheet*, p. 3 (April 2016), http://www.dcf.state.fl.us/programs/access/docs/Family-RelatedMedicaidFactSheet.pdf (last visited Mar. 15, 2017).
[5] Id.

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).

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.[6] States can add benefits, pending federal approval. Florida has added benefits, including prescription drugs, adult dental services, and dialysis.[7] 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.[8]

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 that implemented the Statewide Medicaid Managed Care (SMMC) program. Current federal law requires the state to obtain a waiver to implement managed care. Through these waivers, the 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 currently designed for the AHCA to issue invitations to negotiate (ITN) 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 11 regions reflect areas that were initially set by the original Department of Health and Rehabilitative Services, which was re-organized and downsized into several smaller agencies in the 1990s.

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.[9]

The LTC component began enrolling in August 2013 and completed its statewide roll-out in March 2014. The MMA component began enrolling Medicaid recipients in May 2014 and

[6] Section 409.905, F.S.
[7] Section 409.906, F.S.
[8] *See* Section 1905 9(r) of the Social Security Act.
[9] 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.

finished its roll-out in August 2014. These contracts will be re-procured in 2017 with contract execution and implementation expected during the last part of 2018, according to the AHCA.

The chart below shows the enrollment in each of these components as of March 1, 2017:

Statewide Medicaid Managed Care - March 2017			
Component	**Enrollment Start Date**	**Budget[10]**	**Enrollment[11] *(as of Mar. 2017)***
Long-Term Care Plan	August 2013	$3.97 billion	94,803
Managed Medical Assistance	May 2014	$14.4 billion	3,233,235

The LTC program provides services in two settings: nursing facilities or home and community based services (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 are delivered through waivers and are dependent on the availability of annual funding in the general appropriations act (GAA).

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.[12] 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 under s. 409.904, F.S.

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 the LTC component.[13] 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.

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

[10] 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. 14, 2017).
[11] Agency for Health Care Administration, *SMMC MMA Enrollment by County by Plan* (As of Mar. 1, 2017), http://ahca.myflorida.com/medicaid/Finance/data_analytics/enrollment_report/index.shtml (last visited Mar. 14, 2017).
[12] Letter from U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services to Beth Kidder, Interim Deputy Secretary for Medicaid, Agency for Health Care Administration (Dec. 19, 2016), *available at http://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/federal_authorities/federal_waivers/docs/LTC_Approval_Letter_2016-12-19.pdf* (last visited Mar. 14, 2017).
[13] Florida Dep't of Elderly Affairs, *Comprehensive Assessment and Review for Long-Term Care Services (CARES)*, http://elderaffairs.state.fl.us/doea/cares.php (last visited Mar. 14, 2017).

through the GAA to serve elders off the waitlist who have a priority score of 4 or higher.[14] 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 prior enrollment into the HCBS portion of the program. Exemptions from the wait list also exist under s. 409.979(3)(f), F.S.

Individuals who are enrolled in the following programs may enroll in the LTC program, but are not required to:

- Developmental Disabilities waiver program;
- Traumatic Brain and Spinal Injury waiver;
- Project AIDS Care waiver;
- Adult Cystic Fibrosis waiver;
- Program of All-Inclusive Care for the Elderly (PACE);
- Familial Dysautonomia waiver; or
- Model waiver.[15]

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.[16]

Delivery System and Benefits

The AHCA conducted a competitive procurement to select LTC and MMA plans in each of the 11 regions in 2012. Under the Invitation to Negotiate for MMA plans, the AHCA selected 10 different companies to serve as the health care delivery system. Of the plans selected, 11 of the awarded contracts went to general, non-specialty plans, of which five were PSNs.[17] Five different specialty plans and the Children's Medical Services plan were also awarded contracts.[18,19] Currently, MMA recipients receive services through 11 different managed care plans, of which two are PSNs.

In 2012, the AHCA awarded seven LTC contracts, including one statewide contract.[20] One of the original LTC contracts operated as a PSN; however, that plan is no longer participating in SMMC. The LTC services are now delivered through six managed care plans, which vary based

[14] *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, GAA provided funding during first year of the LTCMC program for those on the wait list with priority scores of 5 or higher. (Ch. Law 2013-40, line item 414).
[15] *Id.*
[16] 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. 15, 2017).
[17] Agency for Health Care Admin., *Florida Managed Medical Assistance Program - 1115 Research and Demonstration Waiver (3rd Quarter Progress Report: January 1, 2014 - March 31, 2014),* p. 15, (on file with the Senate Committee on Health Policy).
[18] *Id.*
[19] Agency for Health Care Administration, *Medicaid and Managed Care* (Sept. 3, 2014), http://ahca.myflorida.com/Medicaid/recent_presentations/Child_Protection_Summit_2014-09-03.pdf (last visited Mar. 20, 2017).
[20] Agency for Health Care Administration, *Statewide Medicaid Managed Care Update* (Oct. 8, 2013) (on file with the Senate Committee on Health Policy).

on the recipient's region. Each region has at least two plans to allow for recipient choice. For nursing facilities and hospices, the plans are required to pay those designated providers a rate set by the AHCA. All six of the LTC plans also participate in the MMA program.

In addition to these plans, there are six specialty plans that serve unique populations: Children's Medical Services for children with chronic conditions; two plans for individuals with HIV/AIDS; a plan for child welfare enrollees; a plan for recipients eligible for both Medicaid and Medicare with chronic conditions, such as diabetes or congestive heart failure; and a plan for individuals with serious mental illness. Recipients in both components of the program receive choice counseling services to assist them in selecting the plan that will best meet their needs.

The total enrollment in the specialty plans as of March 1, 2017 is shown in the chart below:[21]

Specialty Plan Enrollment - March 2017	
Component	**Enrollment (As of March 1, 2017)**
Child Welfare Plan	31,810
Specialty Plans (Capitated)	78,842
Children's Medical Services Network	50,924
Total:	**161,576**

The managed care plans under both components are required to cover a minimum level of benefits as prescribed under s. 409.973, F.S., for the MMA plans, and s. 409.98, F.S., for the LTC plans. However, the statutes also permit the plans to offer an expanded menu of optional benefits.

Mandatory Benefits - Statewide Medicaid Managed Care	
Managed Medical Assistance	**Long-Term Care**
Advanced registered nurse practitioner services	Nursing facility care
Ambulatory surgical treatment center services	Services provided in assisted living facility
Birthing center services	Hospice
Chiropractic services	Adult day care
Dental services	Medical equipment and supplies, including incontinence supplies
Early periodic screening diagnostic and treatment services for recipients under age 21	Personal care
Emergency services	Home accessibility adaption
Family planning services and supplies	Behavior management
Healthy Start services (with exceptions)	Home-delivered meals
Hearing services	Case management
Home health agency services	Therapies
Hospice services	Occupational therapy
Hospital inpatient services	Speech therapy

[21] Agency for Health Care Administration, SMMC MMA Specialty Capitated Enrollment Report (As of Mar. 1, 2017).

Mandatory Benefits - Statewide Medicaid Managed Care	
Managed Medical Assistance	**Long-Term Care**
Hospital outpatient services	Respiratory therapy
Laboratory and imaging services	Physical therapy
Medical supplies, equipment, prostheses, and orthoses	Intermittent and skilled nursing
Mental health services	Medication administration
Nursing care	Medication management
Optical services and supplies	Nutritional assessment and risk reduction
Optometrist services	Caregiver training
Physical, occupational, respiratory, and speech therapy services	Respite care
Physician services, including physician assistant services	Transportation
Podiatric services	Personal emergency response system
Prescription drugs	
Renal dialysis services	
Respiratory equipment and supplies	
Rural health clinic services	
Substance abuse treatment services	
Transportation to access covered services	

The 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 elect the same managed care plan for both components. These plans are referred to as comprehensive plans.

Provider Service Networks

The payment design of the SMMC was intended to facilitate a smooth transition from a mix of fee-for-service, primary care case management, and managed care delivery to a statewide system of Medicaid managed care. The statute permitted the PSNs to be reimbursed on a fee-for-service or prepaid basis, but only for the first two years of the plan's operation or until the contract year beginning September 1, 2014, whichever is later. The AHCA is required to conduct cost reconciliations for the fee-for-service PSNs to determine the amount of any cost savings. All other managed care plans under SMMC are paid on a capitated basis meaning that a plan must pay for all covered services under the contract regardless of whether the capitated rate covers the cost of services for that recipient.

During the procurement process, at least one of the contract awards must be to a PSN if any PSNs submit a responsive bid. However, the AHCA must also issue an additional ITN following the end of a procurement, only for provider service networks, in those regions where no provider service networks submitted a responsive bid.

III. Effect of Proposed Changes:

Provider Service Networks (Sections 1, 3, 4, 6, 7, and 8)

The bill removes the option for PSNs, under both the MMA and LTC components, to be reimbursed on a fee-for-service basis. Prepaid PSNs shall be reimbursed only on a per-member, per month basis. Currently, PSNs could elect to receive payments for the first 2 years of a contract or until the contract year beginning September 1, 2014, whichever is later, under fee-for-service or on a capitated basis. The bill also deletes provisions relating to quality selection criteria specific to savings under PSNs, which are calculated under fee-for-service rates.

The reconciliation and cost savings review process sections relating to the PSN fee-for-service payment process are deleted from the MMA and LTC sections of the SMMC program. Provisions relating to how the cost reconciliations shall be conducted and the reconciliation deadline are removed to correspond to the removal of those now obsolete provisions.

The ITN process for both the MMA and LTC components is modified to no longer require the AHCA to conduct a separate procurement process within 12 months of the initial procurement process if no PSN is selected during the initial procurement.

Managed Care Plan Selection (Sections 3, 6, and 8)

The bill modifies the AHCA's responsibilities for compiling and publishing a databook as part of the ITN process to require a comprehensive set of utilization and spending data that is consistent with actuarial rate-setting practices and standards. The modification eliminates specific requirements that the data include the three most recent contract years for all Medicaid recipients by region or county. The source of the data in the databook report must include the most recent 24 months of validated data from the Medicaid Encounter Data System. The health care delivery regions for both the MMA and LTC components are also collapsed and changed to letters from numbers. These modifications provide for administrative streamlining and will enhance plan stability through increased market share by the plans, according to the AHCA. Since the original regions were created in the 1990s, the AHCA believes these revised regions more accurately reflect the health care market and current utilization patterns.[22] The larger regions will also assist the AHCA in ensuring compliance with the access and appointment standards by the managed care plans, as a wider choice of plans is likely to be available to recipients. The pooling of additional membership across the collapsed regions will likely draw more interested parties to some of the less populated areas of the state.

The table below shows the proposed re-groupings of counties and the minimum and maximum number of plans for the procurement. The plan limitations vary for MMA and LTC to reflect the enrollment level differences in the two programs.

[22] Agency for Health Care Administration, *Senate Bill 916 Analysis* (Feb. 24, 2017), p. 3, (on file with the Senate Committee on Health Policy).

Proposed Region Changes and Plan Limitations									
		SMMC				***MMA***		***LTC***	
Current Region	***Counties***	***Plan Min.***	***Plan Max.***	***New Region***	***Counties***	***Plan Min.***	***Plan Max.***	***Plan Min.***	***Plan Max.***
1	*Escambia, Okaloosa, Santa Rosa, Walton*	*2*	*0*	***A***	*Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, Washington*	*3*	*4*	*3*	*4*
2	*Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, Wakulla, Washington*	*2*	*0*	***B***	*Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, Union, Volusia*	*3*	*6*	*3*	*6*
3	*Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Putnam, Sumter, Suwannee, Union*	*3*	*5*	***C***	*Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, Polk*	*5*	*10*	*5*	*8*
4	*Baker, Clay, Duval, Flagler, Nassau, St. Johns, Volusia*	*3*	*5*	***D***	*Brevard, Orange, Osceola, Seminole*	*3*	*6*	*3*	*6*
5	*Pasco, Pinellas*	*2*	*4*	***E***	*Charlotte, Collier, Desoto, Glades, Hendry, Lee, Sarasota*	*3*	*4*	*3*	*4*
6	*Hardee, Highlands, Hillsborough, Manatee, Polk*	*4*	*7*	***F***	*Indian River, Martin, Okeechobee, Palm Beach, St. Lucie*	*3*	*5*	*3*	*5*
7	*Brevard, Orange, Osceola, Seminole*	*3*	*6*	***G***	*Broward*	*3*	*5*	*3*	*4*
8	*Charlotte, Collier, Desoto, Glades, Hendry, Lee, Sarasota*	*2*	*4*	***H***	*Miami-Dade and Monroe*	*5*	*10*	*5*	*10*
9	*Indian River, Martin, Okeechobee, Palm Beach, St. Lucie*	*2*	*4*						
10	*Broward*	*2*	*4*						
11	*Miami-Dade, Monroe*	*5*	*10*						

Obsolete Language (Sections 2, 5, 6, and 7)

Sections 2, 5, 6, and 7 amend ss. 409.964, 409.971, and 409.974(1), and 409.978(1), F.S., respectively, to remove obsolete language. These sections contain references to dates or activities associated with program implementation, the initial procurement process, and expired deadlines.

Effective Date (Section 9)

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:

This bill reorganizes the regions and the number of plans that may be selected in each region. The AHCA plans to re-procure the SMMC contracts in late 2017 giving the health plan industry, both those currently with contracts and those who wish to gain a contract, an opportunity to bid on the new ITN. The AHCA believes that collapsing regions will result in administrative streamlining and more accurately reflects today's health care utilization patterns. These changes may result in more competitive proposals from more managed care organizations during the upcoming procurement process, resulting in savings to the state and more choices for the consumer. In response to a voluntary Intent to Bid request, the AHCA received 41 responses from PSNs and HMOs that were interested in all three types of plans: long-term care, specialty, and managed medical assistance.[23]

[23] Agency for Health Administration, *Statewide Medicaid Managed Care (SMMC) 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. 16, 2017).

Any changes in which managed care organizations receive contracts under a new procurement will impact the health care provider community in 2017 and 2018. Not only will Medicaid managed care enrollees possibly be transitioning to new providers, but the provider community may have to adapt to a new group of managed care plans.

C. Government Sector Impact:

According to the AHCA, the bill has no impact on state revenues or expenditures.[24] However, the AHCA also believes, and notes in its bill analyses that collapsing regions will result in administrative streamlining and that these new regions will more accurately reflect today's health care utilization patterns. These changes in the regions may result in more competitive proposals from more managed care organizations during the upcoming procurement process, resulting in additional savings to the state and more choices for the consumer.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The AHCA plans to release an ITN in the summer of 2017. Non-binding letters of Intent to Bid were requested from interested bidders by February 13, 2017, using the current 11 regions. [25] With changes to the current business process, an effective date of July 1, 2017, may keep the AHCA from maintaining their current deadlines.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.912, 409.964, 409.966, 409.968, 409.971, 409.974, 409.978, and 409.981.

IX. Additional Information:

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

CS by Appropriations on April 25, 2017:
The committee substitute:

- Requires that when selecting a plan for participation in the Medicaid program, the agency compile and publish a databook consisting of a comprehensive set of utilization and spending data consistent with actuarial rate-setting practices and standards. The source of the data in the databook report must include the most recent 24 months of validated data from the Medicaid Encounter Data System.
- Changes the following regions to the a new structure for the Managed medical assistance program: At least three plans and up to four plans for Region A; at least

[24] *Supra* note 20, at 4.
[25] Agency for Health Care Administration, *Non-binding Letters of Intent from Potential SMMC Plans,* http://ahca.myflorida.com/medicaid/statewide_mc/SMMC_LOI.shtml (last visited Mar. 16, 2017).

three plans and up to six plans for Region B; at least five and up to 10 plans for Region C; at least three and up to four plans for Region E; at least three plans and up to five plans for Region F; and at least three plans and up to five six plans for Region G.

- Changes the following regions to a new structure for the long-term care managed care program: At least three plans and up to four plans for Region A; at least three plans and up to six plans for Region B; at least five and up to eight plans for Region C; at least three and up to four plans for Region E; at least three plans and up to five plans for Region F; and at least three and up to four plans for Region G.

B. Amendments:

None.

By Senator Grimsley

26-00434A-17 2017916__

A bill to be entitled

An act relating to the statewide Medicaid managed care program; amending s. 409.912, F.S.; deleting the fee-for-service option as a basis for the reimbursement of Medicaid provider service networks; amending s. 409.964, F.S.; deleting an obsolete provision; amending s. 409.966, F.S.; requiring that a required databook consist of data that is consistent with actuarial rate-setting practices and standards; revising the designation and county makeup of regions of the state for purposes of procuring health plans that may participate in the Medicaid program; adding a factor that the Agency for Health Care Administration must consider in the selection of eligible plans; deleting a requirement related to fee-for-service provider service networks; amending s. 409.968, F.S.; requiring provider service networks to be prepaid plans; deleting a fee-for-service option for Medicaid reimbursement for provider service networks; amending s. 409.971, F.S.; deleting an obsolete provision; amending s. 409.974, F.S.; revising the number of eligible Medicaid health care plans the agency must procure for certain regions in the state; deleting an obsolete provision; amending s. 409.978, F.S.; deleting an obsolete provision; amending s. 409.981, F.S.; revising the number of eligible Medicaid health care plans the agency must procure for certain regions in the state; deleting a requirement that the agency consider a specific factor relating to the selection

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of managed medical assistance plans; providing an effective date.

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

Section 1. Subsection (2) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician’s opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program. This section does not restrict access to emergency services or poststabilization care services as defined in 42 C.F.R. s. 438.114. Such confirmation or second opinion shall be rendered in a manner approved by the agency. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services. The agency shall contract with a vendor to monitor and evaluate the clinical practice patterns of providers in order to identify

trends that are outside the normal practice patterns of a provider's professional peers or the national guidelines of a provider's professional association. The vendor must be able to provide information and counseling to a provider whose practice patterns are outside the norms, in consultation with the agency, to improve patient care and reduce inappropriate utilization. The agency may mandate prior authorization, drug therapy management, or disease management participation for certain populations of Medicaid beneficiaries, certain drug classes, or particular drugs to prevent fraud, abuse, overuse, and possible dangerous drug interactions. The Pharmaceutical and Therapeutics Committee shall make recommendations to the agency on drugs for which prior authorization is required. The agency shall inform the Pharmaceutical and Therapeutics Committee of its decisions regarding drugs subject to prior authorization. The agency is authorized to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The agency may competitively bid single-source-provider contracts if procurement of goods or services results in demonstrated cost savings to the state without limiting access to care. The agency may limit its network based on the assessment of beneficiary access to care, provider availability, provider quality standards, time and distance standards for access to care, the cultural competence of the provider network, demographic characteristics of Medicaid beneficiaries, practice and provider-to-beneficiary standards, appointment wait times, beneficiary use of services, provider turnover, provider profiling, provider licensure history, previous program integrity investigations and findings, peer

review, provider Medicaid policy and billing compliance records, clinical and medical record audits, and other factors. Providers are not entitled to enrollment in the Medicaid provider network. The agency shall determine instances in which allowing Medicaid beneficiaries to purchase durable medical equipment and other goods is less expensive to the Medicaid program than long-term rental of the equipment or goods. The agency may establish rules to facilitate purchases in lieu of long-term rentals in order to protect against fraud and abuse in the Medicaid program as defined in s. 409.913. The agency may seek federal waivers necessary to administer these policies.

(2) The agency may contract with a provider service network~~, which may be reimbursed on a fee-for-service or prepaid basis~~. Prepaid provider service networks shall receive per-member, per-month payments. ~~A provider service network that does not choose to be a prepaid plan shall receive fee-for-service rates with a shared savings settlement. The fee-for-service option shall be available to a provider service network only for the first 2 years of the plan's operation or until the contract year beginning September 1, 2014, whichever is later. The agency shall annually conduct cost reconciliations to determine the amount of cost savings achieved by fee-for-service provider service networks for the dates of service in the period being reconciled. Only payments for covered services for dates of service within the reconciliation period and paid within 6 months after the last date of service in the reconciliation period shall be included. The agency shall perform the necessary adjustments for the inclusion of claims incurred but not reported within the reconciliation for claims that could be~~

~~received and paid by the agency after the 6-month claims processing time lag. The agency shall provide the results of the reconciliations to the fee-for-service provider service networks within 45 days after the end of the reconciliation period. The fee-for-service provider service networks shall review and provide written comments or a letter of concurrence to the agency within 45 days after receipt of the reconciliation results. This reconciliation shall be considered final.~~

(a) A provider service network that ~~which~~ is reimbursed by the agency on a prepaid basis shall be exempt from parts I and III of chapter 641, but must comply with the solvency requirements in s. 641.2261(2) and meet appropriate financial reserve, quality assurance, and patient rights requirements as established by the agency.

(b) A provider service network is a network established or organized and operated by a health care provider, or group of affiliated health care providers, which provides a substantial proportion of the health care items and services under a contract directly through the provider or affiliated group of providers and may make arrangements with physicians or other health care professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians, by other health professionals, or through the institutions. The health care providers must have a controlling interest in the governing body of the provider service network organization.

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 managed care program for all covered services, including long-term care services. The agency shall apply for and implement state plan amendments or waivers of applicable federal laws and regulations necessary to implement the program. Before seeking a waiver, the agency shall provide public notice and the opportunity for public comment and include public feedback in the waiver application. The agency shall hold one public meeting in each of the regions described in s. 409.966(2), and the ~~time~~ period for public comment for each region shall end no sooner than 30 days after the completion of the public meeting in that region. ~~The agency shall submit any state plan amendments, new waiver requests, or requests for extensions or expansions for existing waivers, needed to implement the managed care program by August 1, 2011.~~

Section 3. Subsection (2) and paragraphs (a), (d), and (e) of subsection (3) of section 409.966, Florida Statutes, are amended to read:

409.966 Eligible plans; selection.—

(2) ELIGIBLE PLAN SELECTION.—The agency shall select a limited number of eligible plans to participate in the Medicaid program using invitations to negotiate in accordance with s. 287.057(1)(c). At least 90 days before issuing an invitation to negotiate, the agency shall compile and publish a databook consisting of a comprehensive set of utilization and spending data consistent with actuarial rate-setting practices and standards ~~for the 3 most recent contract years consistent with the rate-setting periods for all Medicaid recipients by region~~

~~or county. The source of the data in the report must include both historic fee-for-service claims and validated data from the Medicaid Encounter Data System. The report must be available in electronic form and delineate utilization use by age, gender, eligibility group, geographic area, and aggregate clinical risk score~~. Separate and simultaneous procurements shall be conducted in each of the following regions:

(a) Region A ~~Region 1~~, which consists of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, ~~and~~ Walton, and Washington Counties.

(b) Region B ~~Region 2~~, which consists of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, Union, and Volusia ~~Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Taylor, Wakulla, and Washington~~ Counties.

(c) Region C ~~Region 3~~, which consists of Hardee, Highlands, Hillsborough, Manatee, Pasco, Pinellas, and Polk ~~Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Lake, Levy, Marion, Putnam, Sumter, Suwannee, and Union~~ Counties.

(d) Region D ~~Region 4~~, which consists of Brevard, Orange, Osceola, and Seminole ~~Baker, Clay, Duval, Flagler, Nassau, St. Johns, and Volusia~~ Counties.

(e) Region E ~~Region 5~~, which consists of Charlotte, Collier, DeSoto, Glades, Hendry, Lee, and Sarasota ~~Pasco and Pinellas~~ Counties.

(f) Region F ~~Region 6~~, which consists of Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie ~~Hardee, Highlands, Hillsborough, Manatee, and Polk~~ Counties.

(g) Region G ~~Region 7~~, which consists of Broward County ~~Brevard, Orange, Osceola, and Seminole Counties~~.

(h) Region H ~~Region 8~~, which consists of Miami-Dade and Monroe ~~Charlotte, Collier, DeSoto, Glades, Hendry, Lee, and Sarasota~~ Counties.

~~(i) Region 9, which consists of Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie Counties.~~

~~(j) Region 10, which consists of Broward County.~~

~~(k) Region 11, which consists of Miami-Dade and Monroe Counties.~~

(3) QUALITY SELECTION CRITERIA.—

(a) The invitation to negotiate must specify the criteria and the relative weight of the criteria that will be used for determining the acceptability of the reply and guiding the selection of the organizations with which the agency negotiates. In addition to criteria established by the agency, the agency shall consider the following factors in the selection of eligible plans:

1. Accreditation by the National Committee for Quality Assurance, the Joint Commission, or another nationally recognized accrediting body.

2. Experience serving similar populations, including the organization’s record in achieving specific quality standards with similar populations.

3. Availability and accessibility of primary care and specialty physicians in the provider network.

4. Establishment of community partnerships with providers that create opportunities for reinvestment in community-based services.

5. Organization commitment to quality improvement and documentation of achievements in specific quality improvement projects, including active involvement by organization leadership.

6. Provision of additional benefits, particularly dental care and disease management, and other initiatives that improve health outcomes.

7. Evidence that an eligible plan has written agreements or signed contracts or has made substantial progress in establishing relationships with providers before the plan submitting a response.

8. Comments submitted in writing by any enrolled Medicaid provider relating to a specifically identified plan participating in the procurement in the same region as the submitting provider.

9. Documentation of policies and procedures for preventing fraud and abuse.

10. The business relationship an eligible plan has with any other eligible plan that responds to the invitation to negotiate.

11. Whether a plan is proposing to establish a comprehensive long-term care plan.

(d) For the first year of the first contract term, the agency shall negotiate capitation rates or fee for service payments with each plan in order to guarantee aggregate savings of at least 5 percent.

~~1.~~ For prepaid plans, determination of the amount of savings shall be calculated by comparison to the Medicaid rates that the agency paid managed care plans for similar populations in the same areas in the prior year. In regions containing no prepaid plans in the prior year, determination of the amount of savings shall be calculated by comparison to the Medicaid rates established and certified for those regions in the prior year.

~~2. For provider service networks operating on a fee-for-service basis, determination of the amount of savings shall be calculated by comparison to the Medicaid rates that the agency paid on a fee-for-service basis for the same services in the prior year.~~

(e) To ensure managed care plan participation in Regions A and E ~~Regions 1 and 2~~, the agency shall award an additional contract to each plan with a contract award in Region A ~~Region 1~~ or Region E ~~Region 2~~. Such contract shall be in any other region in which the plan submitted a responsive bid and negotiates a rate acceptable to the agency. If a plan that is awarded an additional contract pursuant to this paragraph is subject to penalties pursuant to s. 409.967(2)(i) for activities in Region A ~~Region 1~~ or Region E ~~Region 2~~, the additional contract is automatically terminated 180 days after the imposition of the penalties. The plan must reimburse the agency for the cost of enrollment changes and other transition activities.

Section 4. Subsection (2) of section 409.968, Florida Statutes, is amended to read:

409.968 Managed care plan payments.—

(2) Provider service networks shall ~~may~~ be prepaid plans and receive per-member, per-month payments negotiated pursuant

to the procurement process described in s. 409.966. ~~Provider service networks that choose not to be prepaid plans shall receive fee-for-service rates with a shared savings settlement. The fee-for-service option shall be available to a provider service network only for the first 2 years of its operation. The agency shall annually conduct cost reconciliations to determine the amount of cost savings achieved by fee-for-service provider service networks for the dates of service within the period being reconciled. Only payments for covered services for dates of service within the reconciliation period and paid within 6 months after the last date of service in the reconciliation period must be included. The agency shall perform the necessary adjustments for the inclusion of claims incurred but not reported within the reconciliation period for claims that could be received and paid by the agency after the 6-month claims processing time lag. The agency shall provide the results of the reconciliations to the fee-for-service provider service networks within 45 days after the end of the reconciliation period. The fee-for-service provider service networks shall review and provide written comments or a letter of concurrence to the agency within 45 days after receipt of the reconciliation results. This reconciliation is considered final.~~

Section 5. Section 409.971, Florida Statutes, is amended to read:

409.971 Managed medical assistance program.—The agency shall make payments for primary and acute medical assistance and related services using a managed care model. ~~By January 1, 2013, the agency shall begin implementation of the statewide managed medical assistance program, with full implementation in all~~

~~regions by October 1, 2014.~~

Section 6. Subsections (1) and (2) of section 409.974, Florida Statutes, are amended to read:

409.974 Eligible plans.—

(1) ELIGIBLE PLAN SELECTION.—The agency shall select eligible plans through the procurement process described in s. 409.966. ~~The agency shall notice invitations to negotiate no later than January 1, 2013.~~

(a) The agency shall procure at least two plans and up to four plans for Region A ~~Region 1~~. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.

(b) The agency shall procure at least three plans and up to five ~~two~~ plans for Region B ~~Region 2~~. At least one plan shall be a provider service network if any provider service networks submit a responsive bid.

(c) The agency shall procure at least four ~~three~~ plans and up to seven ~~five~~ plans for Region C ~~Region 3~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(d) The agency shall procure at least three plans and up to six ~~five~~ plans for Region D ~~Region 4~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(e) The agency shall procure at least two plans and up to four plans for Region E ~~Region 5~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(f) The agency shall procure at least two ~~four~~ plans and up

to four ~~seven~~ plans for Region F ~~Region 6~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(g) The agency shall procure at least two ~~three~~ plans and up to four ~~six~~ plans for Region G ~~Region 7~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(h) The agency shall procure at least five ~~two~~ plans and up to 10 ~~four~~ plans for Region H ~~Region 8~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

~~(i) The agency shall procure at least two plans and up to four plans for Region 9. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(j) The agency shall procure at least two plans and up to four plans for Region 10. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(k) The agency shall procure at least five plans and up to 10 plans for Region 11. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~If no provider service network submits a responsive bid, the agency shall procure no more than one less than the maximum number of eligible plans permitted in that region. Within 12 months after the initial invitation to negotiate, the agency shall attempt to procure a provider service network. The agency~~

~~shall notice another invitation to negotiate only with provider service networks in those regions where no provider service network has been selected.~~

(2) QUALITY SELECTION CRITERIA.—In addition to the criteria established in s. 409.966, the agency shall consider evidence that an eligible plan has written agreements or signed contracts or has made substantial progress in establishing relationships with providers before the plan submits ~~submitting~~ a response. The agency shall evaluate and give special weight to evidence of signed contracts with essential providers as defined by the agency pursuant to s. 409.975(1). The agency shall exercise a preference for plans with a provider network in which more than ~~over~~ 10 percent of the providers use electronic health records, as defined in s. 408.051. ~~When all other factors are equal, the agency shall consider whether the organization has a contract to provide managed long-term care services in the same region and shall exercise a preference for such plans.~~

Section 7. Subsection (1) of section 409.978, Florida Statutes, is amended to read:

409.978 Long-term care managed care program.—

(1) Pursuant to s. 409.963, the agency shall administer the long-term care managed care program described in ss. 409.978-409.985, but may delegate specific duties and responsibilities for the program to the Department of Elderly Affairs and other state agencies. ~~By July 1, 2012, the agency shall begin implementation of the statewide long-term care managed care program, with full implementation in all regions by October 1, 2013.~~

Section 8. Subsection (2) and paragraphs (c), (d), and (e)

of subsection (3) of section 409.981, Florida Statutes, are amended to read:

409.981 Eligible long-term care plans.—

(2) ELIGIBLE PLAN SELECTION.—The agency shall select eligible plans through the procurement process described in s. 409.966. The agency shall procure:

(a) At least two plans and up to four plans for Region A ~~Region 1~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(b) At least three ~~Two~~ plans and up to five plans for Region B ~~Region 2~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(c) At least four ~~three~~ plans and up to seven ~~five~~ plans for Region C ~~Region 3~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(d) At least three plans and up to six ~~five~~ plans for Region D ~~Region 4~~. At least one plan must be a provider service network if any provider service network submits a responsive bid.

(e) At least two plans and up to four plans for Region E ~~Region 5~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(f) At least two ~~four~~ plans and up to four ~~seven~~ plans for Region F ~~Region 6~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(g) At least two ~~three~~ plans and up to four ~~six~~ plans for

Region G ~~Region 7~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

(h) At least five ~~two~~ plans and up to 10 ~~four~~ plans for Region H ~~Region 8~~. At least one plan must be a provider service network if any provider service networks submit a responsive bid.

~~(i) At least two plans and up to four plans for Region 9. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(j) At least two plans and up to four plans for Region 10. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~(k) At least five plans and up to 10 plans for Region 11. At least one plan must be a provider service network if any provider service networks submit a responsive bid.~~

~~If no provider service network submits a responsive bid in a region other than Region 1 or Region 2, the agency shall procure no more than one less than the maximum number of eligible plans permitted in that region. Within 12 months after the initial invitation to negotiate, the agency shall attempt to procure a provider service network. The agency shall notice another invitation to negotiate only with provider service networks in regions where no provider service network has been selected.~~

(3) QUALITY SELECTION CRITERIA.—In addition to the criteria established in s. 409.966, the agency shall consider the following factors in the selection of eligible plans:

~~(c) Whether a plan is proposing to establish a~~

~~comprehensive long-term care plan and whether the eligible plan has a contract to provide managed medical assistance services in the same region.~~

(c) ~~(d)~~ Whether a plan offers consumer-directed care services to enrollees pursuant to s. 409.221.

(d) ~~(c)~~ Whether a plan is proposing to provide home and community-based services in addition to the minimum benefits required by s. 409.98.

Section 9. 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 17, 2017

I respectfully request that **CS/Senate Bill #916**, relating to Statewide Medicaid Managed Care, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 26

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

916
Bill Number (if applicable)

5659044
Amendment Barcode (if applicable)

Topic Statewide Medicaid Managed Care

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St. *Street*

Phone 850-321-9386

Tallahassee *City* FL *State* 32301 *Zip*

Email fcfep@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FL Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

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 1018 (546818)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources); Environmental Preservation and Conservation Committee; and Senators Grimsley and Galvano
SUBJECT:	Contaminated Site Cleanup
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	**Fav/CS**
2.	Reagan	Betta	AEN	**Recommend: Fav/CS**
3.	Reagan	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1018 provides for the advancement ahead of priority ranking for the rehabilitation of individual petroleum contaminated sites proposed for redevelopment; the elimination of the 25 percent cost-share requirement for the advanced cleanup of such sites; a $5 million increase in the annual funding available to the Department of Environmental Protection (DEP) for petroleum rehabilitation advance cleanup work; advanced site assessments for certain sites contaminated with drycleaning solvents; and a $5 million increase in the amount of annual voluntary cleanup tax credit funding DEP is authorized to allocate.

The bill increases expenditures from the Inland Protection Trust Fund by $5 million annually. The bill will reduce revenues deposited into the General Revenue Fund by $5 million annually based on a higher volume of tax credits.

II. Present Situation:

Petroleum Restoration Program

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of

accidental spills, storage tank system leaks, or poor maintenance practices.[1] These discharges pose a significant threat to groundwater quality, and Florida relies on groundwater for 90 percent of its drinking water.[2] The identification and cleanup of petroleum contamination is particularly challenging due to Florida's diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.[3]

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases.[4] The Department of Environmental Protection (DEP) is responsible for regulating these storage tank systems. In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems.[5] The SUPER Act authorized the department to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated areas, which led to the creation of the Petroleum Restoration Program (Restoration Program). The Restoration Program establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup.

Abandoned Tank Restoration Program

In 1990, the legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline was subsequently extended to 1992, then 1994. In 1996, the legislature waived the deadline indefinitely for owners who are unable to pay for the closure of abandoned tanks. To be eligible for the ATRP, applicants must certify that the petroleum system has not stored petroleum products for consumption, use, or sale since March 1, 1990.[6] In 2016, the legislature eliminated the June 30, 1996 application deadline.[7]

Site Rehabilitation

Florida law requires land contaminated by petroleum to be cleaned up, or rehabilitated, so that the concentration of each contaminant in the ground is below a certain level.[8] These levels are known as Cleanup Target Levels (CTLs).[9] Once the CTLs for a contaminated site[10] has been attained, rehabilitation is complete and the site may be closed. When a site is closed, no further

[1] Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012), http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/geninfo/2012Program_Briefing_11Jan12.pdf.
[2] *Id.*
[3] *Id.*
[4] Ch. 83-310, Laws of Fla.
[5] Ch. 86-159, Laws of Fla.
[6] Chapter 89-188, Laws of Fla.
[7] Section 376.305(6), F.S.
[8] Sections 376.301(8) and 376.3071(5), F.S.
[9] *Id.*
[10] A "site" is any contiguous land, sediment, surface water, or groundwater area upon or into which a discharge of petroleum or petroleum products has occurred or for which evidence exists that such a discharge has occurred. The site is the full extent of the contamination, regardless of property boundaries.

cleanup action is required unless the contaminant levels increase above the CTLs or another discharge occurs.[11]

State Funding Assistance for Rehabilitation

In 2012, the average cost to rehabilitate a site was approximately $400,000, but some sites may cost millions of dollars to rehabilitate.[12] Under Florida law, an owner of contaminated land (site owner) is responsible for rehabilitating the land unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.[13] Over the years, different eligibility programs have been implemented to provide state financial assistance to certain site owners and responsible parties for site rehabilitation.

To receive rehabilitation funding assistance, a site must qualify under one of these programs, which are outlined in the following table:

Table 1: State Assisted Petroleum Cleanup Eligibility Programs

Program Name	Program Dates	Program Description
Early Detection Incentive Program (EDI) (s. 376.30371(9), F.S.)	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	• First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) (s. 376.3072, F.S.)	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	• Required facilities to purchase third party liability insurance to be eligible • Provides varying amounts of state-funded site restoration coverage
Abandoned Tank Restoration Program (ATRP) (s. 376.305(6), F.S.)	For petroleum storage systems that have not stored petroleum since March 1, 1990[14]	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
Innocent Victim Petroleum Storage System Restoration Program (s. 376.30715, F.S.)	The application period began on July 1, 2005, and remains open	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985

[11] Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012), http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/geninfo/2012Program_Briefing_11Jan12.pdf.
[12] *Id*.
[13] Section 376.308, F.S.
[14] The ATRP originally had a one-year application period, but the deadline was extended. The deadline is now waived indefinitely for site owners who are financially unable to pay for the closure of abandoned tanks. Section 376.305(6)(b), F.S.

Petroleum Cleanup Participation Program (PCPP) (s. 376.3071(13), F.S.)	Remains open	• Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs[15] • Originally had a $300,000 cap on the amount of coverage, which was raised to $400,000 beginning July 1, 2008
Consent Order (aka "Hardship" or "Indigent") (s. 376.3071(7)(c), F.S.)	The program began in 1986 and remains open	• Created to provide financial assistance under certain circumstances for sites that the Department initiates an enforcement action to clean up • An agreement is formed whereby the Department conducts the cleanup and the site owner or responsible party pays for a portion of the costs

As of October 2015, there are 19,128 sites eligible for state funding through one of the above programs.[16] Of these, approximately 8,603 have been rehabilitated and closed, approximately 5,576 are currently undergoing some phase of rehabilitation, and approximately 4,949 await rehabilitation. [17]

Inland Protection Trust Fund

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).[18] The IPTF is funded by an excise tax per barrel on petroleum and petroleum products in or imported into the state.[19] The amount of the excise tax per barrel is determined by a formula, which is dependent upon the unobligated balance of the IPTF.[20] Each year, approximately $200 million from the excise tax is deposited into the IPTF to fund restoration of petroleum contaminated sites.[21] At present, the excise tax is 80 cents per barrel.[22]

Funding for rehabilitation of a site is based on a relative risk scoring system. Each funding-eligible site receives a numeric score based on the threat the site contamination poses to the environment or to human health, safety, or welfare.[23] Sites currently in the Restoration Program range in score from 5 to 115 points, with a score of 115 representing a substantial threat and a

[15] The 25 percent copay requirement can be reduced or eliminated if the site owner and all responsible parties demonstrate that they are financially unable to comply. Section 376.3071(13)(c), F.S.
[16] DEP, *2016 House Bill 697 Agency Analysis*, (December 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[17] *Id*.
[18] Section 376.3071(3)-(4), F.S.
[19] Sections 206.9935(3) and 376.3071(6), F.S.
[20] The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between $100 million and $150 million; 60 cents if the unobligated balance is between $50 million and $100 million; and 80 cents if the unobligated balance is $50 million or less. Section 206.9935(3), F.S.
[21] DEP, *2016 House Bill 697 Agency Analysis*, (December 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[22] Department of Revenue, *Pollutants Tax*, http://dor.myflorida.com/dor/taxes/fuel/pollutants.html (last visited March 11, 2017).
[23] Section 376.3071(5), F.S., Fla. Admin. Code R. 62-771.100.

score of 5 representing a very low threat.[24] Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.[25] The department sets the priority score funding threshold, which is the minimum score a site must be assigned to receive restoration funding at a particular point in time.[26]

Expediting Site Rehabilitation

Eligible contaminated sites typically receive state rehabilitation funding in priority order based on their numeric score. However, there are some programs that allow sites to receive funding for rehabilitation or site closure out of priority score order, as long as the sites are eligible under one of the programs in Table 1. Two of these programs are Advanced Cleanup and Low Scored Site Initiative.

Advanced Cleanup

The advanced cleanup (formerly known as Preapproved Advanced Cleanup) of petroleum contaminated sites was begun in 1996 to allow an eligible petroleum contamination site to receive state rehabilitation funding even if the site's priority score did not fall within the threshold currently being funded.[27] The purpose of creating the advanced cleanup process was to facilitate property transactions and public works projects on contaminated sites.[28] To obtain authorization for advanced cleanup, a site must be eligible for state restoration funding under the Early Detection Incentive Program (EDI), the Petroleum Liability and Restoration Insurance Program (PLRIP), or the Abandoned Tank Restoration Program (ATRP).[29]

Advanced cleanup is also available for discharges eligible for restoration funding under the Petroleum Cleanup Participation Program (PCPP) for the state's cost share of site rehabilitation.[30] An application for advanced cleanup for a discharge eligible under PCPP must include a cost-sharing commitment for funding under the advanced cleanup criteria in addition to the 25 percent copayment requirement of the PCPP.

To apply for advanced cleanup of petroleum contamination, a facility owner or operator or the person otherwise responsible for site rehabilitation must submit an advanced cleanup application between May 1 and June 30, for the fiscal year beginning July 1, or between November 1 and December 31. The application must consist of:

- A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable along with proof of the ability to pay the cost share. Applications submitted for cleanup may be submitted in one of two formats to meet the cost-share requirement:

[24] DEP, *2016 House Bill 697 Agency Analysis*, (December 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[25] Fla. Admin. Code R. 62-771.300.
[26] DEP, *2015 Senate Bill 314 Agency Analysis*, (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[27] Section 376.30713(1), F.S.
[28] *Id.*
[29] Section 376.30713(1)(d), F.S.
[30] For PCPP sites, Advanced Cleanup is only available for discharge cleanup if the 25 percent copay requirement of PCPP has not been reduced or eliminated pursuant to s. 376.3071(13)(d). s. 376.30713(1)(d), F.S.

  - The applicant may use a commitment to pay, a demonstrated cost savings to DEP, or both to meet the requirement; or
  - For an application relying on a demonstrated cost savings to the DEP, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application a 25 percent cost savings[31] to the DEP for cleanup of the site under the application compared to the cost of cleanup of the same site using the current rates provide to the DEP by the proposed agency term contractor. The DEP shall determine whether the cost savings demonstration is acceptable.
- A nonrefundable review fee of $250 to cover the DEP's administrative costs to review the application;
- A limited contamination assessment report;
- A proposed course of action; and
- A DEP site access agreement, or similar agreement.

The DEP ranks applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who proposes the highest percentage of cost sharing. In some circumstances where applicants propose the same percentage of cost sharing and funds are not available to commit to all of such proposals, applicants may raise their individual cost share commitments and the DEP will rerank the applications.[32]

The DEP negotiates with applicants based on the DEP's rankings. If the DEP and an applicant agree on the course of action, the DEP may enter into a contract with the applicant and negotiate the terms and conditions of the contract. Advanced cleanup must be conducted pursuant to requirements of the Inland Protection Trust Fund and the DEP rule. If the terms of the advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.[33]

The DEP may enter into contracts for a total of up to $25 million of advanced cleanup work in each fiscal year.[34] All funds collected by the DEP pursuant contracts for advanced cleanup work must be deposited into the Inland Protection Trust Fund to be used in the advanced cleanup of petroleum contaminated sites.[35]

Low Scored Site Initiative

The Low Scored Site Initiative (LSSI) was created to expedite the assessment and closure of sites that contain minimal contamination and that are not a threat to human health or the environment. Low scored sites have a priority ranking score of 29 points or less.[36] These sites are eligible for state funds of up to $70,000 each for assessment and limited remediation. The DEP may not encumber more than $15 million for LSSI in any fiscal year.[37]

[31] For aggregate applications of five sites or more the percentage is not specified.
[32] Section 376.30713(2)(b), F.S.
[33] Section 376.30713(3), F.S.
[34] Section 376.30713(4), F.S.
[35] Section 376.30713(5), F.S.
[36] Section 376. 3071(12)(b), F.S.
[37] *Id.*

Drycleaning Solvent Cleanup Program

The Florida Legislature has established a state-funded program to cleanup properties that are contaminated as a result of operations of a drycleaning facility or wholesale supply facility (Ch. 376, F.S.). The program is administered by the DEP. The legislation was supported by the drycleaning industry to address environmental, economic, and liability issues resulting from drycleaning solvent contamination. The program limits the liability of the owner, operator and real property owner of drycleaning or wholesale supply facilities for cleanup of drycleaning solvent contamination if the parties meet the conditions stated in the law.[38]

Funding: Taxes and Fees

A fund has been established to pay for costs related to the cleanup of these properties. The source of revenue for the fund is a gross receipts sales tax, a tax on perchloroethylene sold to or imported by a drycleaning facility, and annual registration fees.[39]

Program Application

The application period for entry into the Drycleaning Solvent Cleanup Program ended December 31, 1998. Applications to the Drycleaning Solvent Cleanup Program are no longer being accepted.[40]

Eligibility and Priority Ranking

Section 376.3078(3), F.S., identifies certain criteria that must be met in order for a site to be eligible, and to remain eligible, for the program. Eligibility in this program does not relieve the owner, operator, or real property owner from federal actions or from current waste management requirements. The score that the site receives determines the order in which the DEP will begin site rehabilitation activities. For eligible sites, costs incurred by the state for site rehabilitation will be absorbed at the expense of the fund minus a deductible amount as specified in the law.[41]

Scoring System

The DEP uses a scoring system to rank and prioritize eligible sites for rehabilitation. Sites are assigned points based upon statutory point values for each site's characteristics.[42] The DEP has developed a priority list of sites for rehabilitation based upon the scoring system, with ranking commensurate with the size of a site's score.[43] Regardless of scoring, however, any site having a condition that exhibits a fire or explosion hazard is highest priority for rehabilitation. The following site characteristics are assigned points in the scoring system:

- The threat the site poses to drinking water supplies based on;
  - The size of the largest uncontaminated public water supply well located within one mile of the site;

[38] Florida Department of Environmental Protection, *Dry Cleaning Solvent Cleanup Program,* http://www.dep.state.fl.us/waste/quick_topics/publications/wc/drycleaning/information/General-Information_04Jan17.pdf
[39] *Id.*
[40] *Id.*
[41] Section 376.3078(3)(e), F.S.
[42] Section 376.3078(7), F.S.
[43] Section 376.3078(8), F.S.

  - The size of the largest uncontaminated private drinking water well located within one mile of the site;
  - The size of the largest contaminated public water supply well located within one mile of the site;
  - The size of the largest contaminated private drinking water well located within one mile of the site;
  - The proximity of both uncontaminated and contaminated water wells to the site;
- The vulnerability of groundwater to contamination from the site;
- The Aquifer Classification for the aquifer area where the site is located;
- The concentrations of chlorinated drycleaning solvents in the soil of the site; and
- The location of the site if it is within:
  - One half mile of an uncontaminated surface water body used as a permitted public water system;
  - One half mile of an Outstanding Florida Water body;
  - One quarter mile of a surface water body; or
  - One quarter mile of an area of critical state concern.

Scored sites are incorporated into the priority list on a quarterly basis with the ranking of all sites adjusted accordingly. Assignments for program tasks to be conducted by state contractors are made according to the current priority list and based on criteria the DEP determines is necessary to achieve cost-effective site rehabilitation. Regardless of the score of a site, the DEP may initiate emergency action for those sites that are a threat to human health and safety, or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment.[44]

Contaminated Site Cleanup Criteria

The DEP rules establish criteria for the purpose of determining, on a site-specific basis, a site rehabilitation program and the level at which a site rehabilitation program may be deemed completed. These rules incorporate to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner.[45] For site rehabilitation to reach a status of site closure or "no further action," often appropriate institutional controls must be agreed to by the owner and applicant and implemented for the site. Institutional controls are the restrictions on use of, or access to, a site such as deed restrictions, restrictive covenants, or conservation easements to eliminate or minimize exposure to petroleum products' chemicals of concern, drycleaning solvents, or other contaminants.[46]

Average Costs and Budget Projections

The cost for cleanup at a site varies greatly depending on the extent of contamination. Typically, sites that transition quickly from assessment to no further action (closure), have lower average costs than sites that remain in the cleanup process. The below chart includes the average costs per phase of cleanup for no further action (closed) sites, and the average costs per phase for sites

[44] Section 376.3078(7) and (8), F.S.
[45] Fla. Admin. Code Ch. 62-780.
[46] Section 376.301(22), F.S.

that are still undergoing cleanup (active) sites. This provides the range in costs associated with closed and active sites.

Phase of Cleanup	Assessment	Design	Remedial Action	Operation & Maintenance	Monitoring	Interim Remedial Measure	Total Average Cost
Closed Sites	$96,038	$20,516	$98,817	$84,160	$31,347	$59,954	$184,469
Active Sites	$147,211	$55,598	$257,120	$212,836	$49,390	$86,511	$578,605

Annual budget projections require the Drycleaning Solvent Cleanup Program to track average costs associated with each phase of cleanup, and to anticipate the number of sites that will transition from one phase of cleanup to the next. Based on a dataset of 322 sites, where the remedy has been selected or the site has been closed, approximately 72 percent of all sites will require active remediation to reach closure, 10 percent will require monitoring only to reach closure, and 18 percent will meet the requirements for no further action following the site assessment. The average cost for site closure will depend on the type of closure achieved (active remediation, monitoring only, or no further action), as shown below.[47]

Sites Issued a Site Rehabilitation Completion Order (Closure) following:	Average Cost
Active Remediation	$306,462
Monitoring Only	$138,308
No Further Action	$62,419

The Brownfields Redevelopment Act

The term "brownfield" was originally coined in the 1970s and referred to any previously developed property, regardless of any contamination issues. The term, as it is currently used, is defined by the U.S. Environmental Protection Agency (EPA) as, "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."[48] In 1995, the EPA created the Brownfields Program in order to manage contaminated property through site remediation and redevelopment. The program was designed to provide local communities access to federal funds allocated for redevelopment, including environmental assessments and cleanups, environmental health studies, and environmental training programs.[49]

[47] Email message dated March 12, 2017, from Wayne Kiger, Director's Office, Division of Waste Management, Florida Department of Environmental Protection (on file with the Senate Committee on Environmental Preservation and Conservation).
[48] Robert A. Jones and William F. Welsh, Michigan Brownfield Redevelopment Innovation: Two Decades of Success 2 (Sept. 2010), *available at* http://www.miseagrant.umich.edu/downloads/focus/brownfields/10-201-EMU-Final-Report.pdf (last visited March 10, 2017).
[49] The Florida Brownfields Association, Brownfields 101 2, *available at* http://c.ymcdn.com/sites/www.floridabrownfields.org/resource/resmgr/imported/Brownfields101.pdf (last visited March 10, 2017).

In 1997, the Florida Legislature enacted the Brownfields Redevelopment Act (Act).[50] The Act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of brownfield sites in order to improve public health and reduce environmental hazards.[51] The Act provides liability protection for program participants who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997.[52]

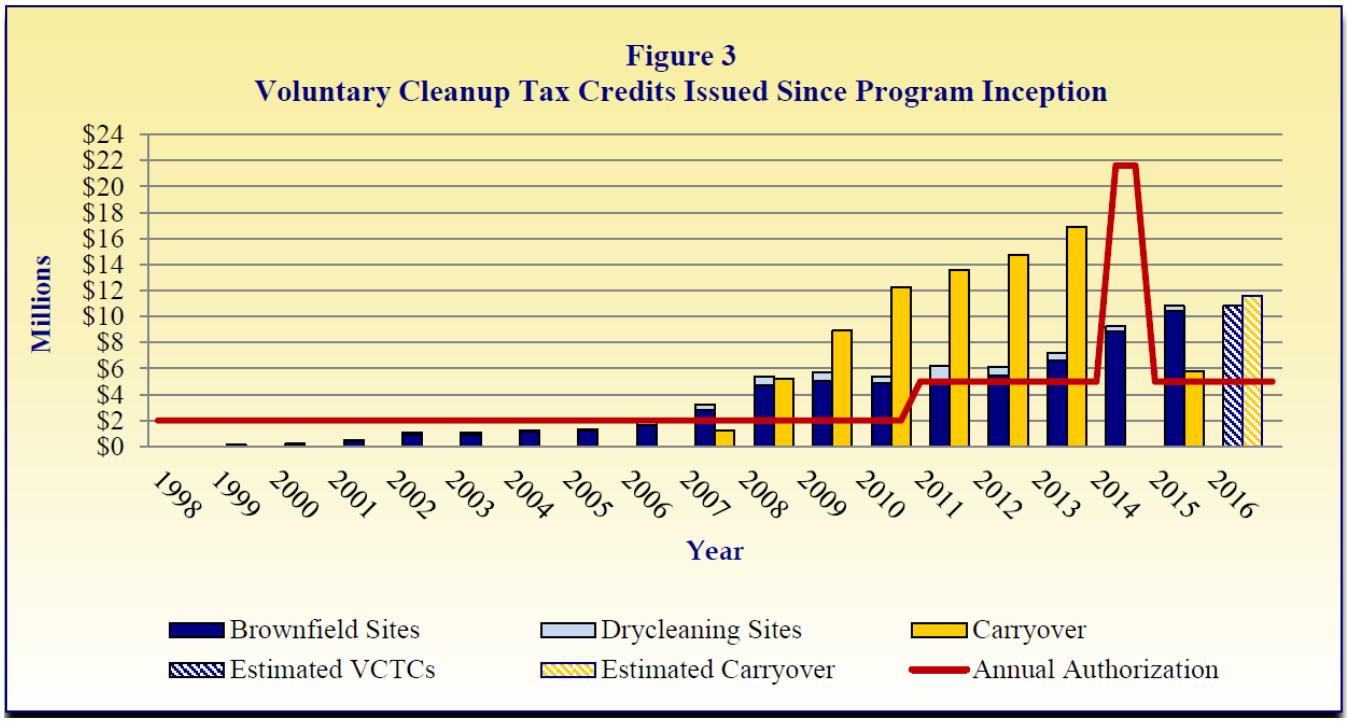
Voluntary Cleanup Tax Credits

In 1998, the Florida Legislature established the Voluntary Cleanup Tax Credit (VCTC) Program to provide an incentive for the voluntary cleanup of drycleaning solvent-contaminated sites and brownfield sites in designated brownfield areas (s. 376.30781, F.S.). At these sites, a tax credit of 50 percent is allowed for the cost of voluntary cleanup activity that is integral to site rehabilitation, with a maximum of $500,000 per site per year. Additionally, at brownfield sites in designated brownfield areas, a one-time 50 percent tax credit is allowed for solid waste removal, with a maximum of $500,000 per site. Tax credits may be applied to state corporate income tax. Effective July 1, 2011, the Legislature increased the annual tax credit authorization from $2 million to $5 million. The VCTC Program has approved $66,875,735 in tax credits since it began. However, approved applications must wait until sufficient credits exist to claim them.[53]

Effective July 1, 2015, the Legislature approved a one-time VCTC authorization of $21.6 million. This authorization was only effective through June 30, 2016. On July 1, 2016, the annual VCTC authorization returned to $5 million per year.[54] The additional authorization allowed DEP to issue certificates for all approved tax credits, eliminating the backlog.[55]

The Brownfields and VCTC Programs have been successful in promoting the cleanup and redevelopment of contaminated, underutilized properties. The one-time increase in the annual authorized VCTC funding level addressed all approved tax credits through June 30, 2015. However, as shown in the figure below, since 2007, the approved tax credits have exceeded the available authorization, and since 2012, the approved tax credits have averaged more than $8.3 million per year. If the dollar amount of future tax credit applications remains consistent with the previous five years, the backlog for un-issued tax credits will continue to grow. As of the issuance of the August 2016 Brownfields Redevelopment Program Report, DEP anticipated, with the $5 million authorization available July 1, 2016, it will issue tax credit certificates to 33 of the 99 applicants for 2015 expenditures. Sixty-four applicants will receive their tax credits in July 2017 and nine applicants will receive their tax credits in July 2018.[56]

[50] Ch. 97-173, s. 1, Laws of Fla.
[51] DEP, Florida Brownfields Redevelopment Act-1998 Annual Report 1 (1998), *available at* http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/leginfo/1998/98final.pdf (last visited March 10, 2017).
[52] Section 376.82, F.S.
[53] DEP, *Florida Brownfields Redevelopment Program Annual Report* (2016), http://dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/AnnualReport/2016/2015-16_FDEP_Annual.pdf
[54] Section 376.30781(4), F.S.
[55] *Id.*
[56] *Id.*



III. Effect of Proposed Changes:

Advanced Cleanup - Property Redevelopment

Section 1 amends s. 376.3071, F.S., to provide an exception from penalties for prompt payment to subcontractors pursuant to s. 287.0585, F.S. Section 1 provides that the contractor may remit payment to the subcontractor within 30 working days after the contractor receives payment from the DEP. If the payments are made within this timeframe the penalties do not apply.

Section 2 amends s. 376.30713, F.S., to add legislative findings regarding the rehabilitation of a site contaminated by discharges of petroleum or petroleum products in advance of its priority ranking. The section contains findings that the inability to advance a site's priority ranking may substantially impede or prohibit property redevelopment and that it is in the public interest and of substantial economic benefit to the state to advance site rehabilitation on a limited basis in order to encourage property redevelopment.

The section creates a separate procedure and criteria for the advancement ahead of its priority ranking of an individual contamination site slated for property redevelopment. The submittal of advanced cleanup applications for such sites are not limited to the two annual application periods from May 1 through June 30 and from November 1 through December 31, as are all other advanced cleanup applications, but are instead accepted on a first-come, first-served basis. Applicants for the advanced cleanup of individual contamination sites slated for redevelopment are also not subject to the 25 percent cost share copayment commitment required of other advanced cleanup applicants provided they demonstrate, as deemed acceptable by the Department of Environmental Protection (DEP), that the following have been included in their applications for cleanup:

- A nonrefundable review fee of $250 for DEP's administrative cost;
- A limited contamination assessment report which is sufficient to support the course of action;
- A proposed course of action for site cleanup;
- A DEP approved agreement with the property owners for site cleanup if the applicant is not the owner;
- Certification to the DEP that the applicant has the authority to enter into an advanced site cleanup contract with the DEP;
- Documentation from the local government having jurisdiction that states that the local government is in agreement with or approves the redevelopment;
- A demonstrated reasonable assurance that the applicant has sufficient financial resources to implement and complete the redevelopment project.

Section 2 provides that site eligibility is not an entitlement to advanced cleanup funding or continued restoration funding.

Section 2 also increases the dollar amount of the contracts for advance cleanup work into which the DEP is authorized to enter from $25 million to a total of $30 million in each fiscal year. The DEP is authorized to designate up to $5 million of those funds for the advance cleanup of individual contaminated sites that meet the criteria in the bill for redevelopment. A single facility or applicant for advance cleanup of an individual contaminated site slated for redevelopment may not be approved for more than $1 million of cleanup activity per fiscal year.
Section 2 also provides the DEP with the right to terminate or amend the voluntary cost-share agreement with property owners or responsible parties if, the property owners or responsible parties are eligible to bundle multiple sites and fail to do so within three subsequent open application periods or 18 months, whichever is shorter.

Section 2 provides that the property owner or responsible party must agree to conduct limited site assessments within 12 months after execution of the voluntary cost-share agreement.

Advanced Site Assessment - Drycleaning

Section 3 amends s. 376.3078, F.S., to provide a finding that it is in the public interest and of substantial environmental and economic benefit to the state to conduct site assessments on a limited basis at sites contaminated with drycleaning solvents in advance of the priority ranking of contaminated sites.

The section provides that a property owner who is eligible for site rehabilitation under the drycleaning solvent cleanup program may request, and the DEP may authorize, an advanced site assessment if the following criteria are met:

- Information from the site assessment would be sufficient for the DEP to better evaluate the actual risk of the contamination, reducing the risk to public health and the environment;
- The property owner agrees to:
  - Implement the appropriate institutional controls at the time the owner requests the advanced site assessment; and
  - Upon completion of the cleanup, implement and maintain the required institutional controls, or a combination of institutional and engineering controls, when the site meets

site rehabilitation criteria for closure with controls in accordance with the DEP rules for site rehabilitation;

- Current conditions at the site allow the site assessment to be conducted in a manner that will result in cost savings to the Water Quality Assurance Trust Fund;
- The annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program is sufficient to pay for the site assessment; and
- The property owner provides access to the site and has paid the appropriate deductible amount depending on when contamination was reported to the DEP as part of a completed application for the Drycleaning Contamination Cleanup Program to rehabilitate the drycleaning facility.

The section also provides that a site may be assessed out of priority ranking order at the DEP's discretion when the site assessment will provide a cost savings to the program.

The section requires an advanced site assessment under the drycleaning solvent cleanup program to incorporate risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner, in accordance with the DEP rules for site rehabilitation. The advanced site assessment must also be sufficient to estimate the cost of cleanup, the proposed course of action for site cleanup, and that the site is appropriate for one of the following:

- Remedial action at the site to mitigate risks that, in the judgment of the DEP, are a threat to human health or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment;
- Additional groundwater monitoring at the site to support natural attenuation monitoring or long-term groundwater monitoring; or
- A recommendation of "no further action," with or without institutional controls or institutional and engineering controls, if the site meets the "no further action" criteria in accordance with the DEP rules for site rehabilitation.

If the site is not appropriate for one of these actions, it is not eligible for advanced site assessment. The DEP must notify the property owner in writing of this determination and return the site to the priority ranking order based on its priority score.

The section requires that advanced site assessment program tasks be assigned by the drycleaning solvent cleanup program. Task assignment must be based on:

- The potential for the development of new site assessment information to allow the DEP to better evaluate the actual risk of the contamination;
- Compatibility with appropriate institutional controls or a combination of institutional and engineering controls;
- The potential for cost savings to the Water Quality Assurance Trust Fund;
- The availability of funds from the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent program;
- The DEP's determination of contractor logistics;
- Geographical considerations; and
- Other criteria that the DEP determines are necessary to achieve the most cost-effective approach.

This section limits available funding for advanced site assessments to 10 percent of the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program. The total funds that may be committed to any one site are capped at $70,000. The DEP must prioritize requests for advanced site assessment at sites under the drycleaning solvent cleanup program based on the date of receipt and the environmental and economic value to the state until the available funding for advanced site assessments has been obligated.

Voluntary Cleanup Tax Credit (VCTC) Funding

Sections 4 and 5 amend ss. 220.1845 and 376.30781, F.S., respectively, to increase the annual cap on voluntary cleanup tax credits from $5 million to $10 million.[57]

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable.

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 should have a positive fiscal impact on the private sector. Redevelopment of property will be encouraged by an additional $5 million available annually for petroleum contamination site rehabilitation for sites proposed for redevelopment. Also, an additional $5 million in funds will be available for voluntary cleanup through corporate income tax credits for the rehabilitation of dry-cleaning solvent contaminated sites or brownfield sites.

[57] Sections 220.1845 and 376.30781, F.S.

C. Government Sector Impact:

The bill will have a $5 million recurring impact to the Inland Protection Trust Fund by increasing the total amount of contracts the DEP is authorized to approve for advanced cleanup work to $30 million annually. The bill will have a $5 million recurring impact to the General Revenue Fund by increasing the annual cap on the voluntary cleanup tax credits to $10 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 376.30713, 376.3078, and 376.86.

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 the Environment and Natural Resources on April 13, 2017:
The committee substitute:

- Amends s. 376.3071, F.S., to provide an exception from penalties for prompt payment to subcontractors pursuant to s. 287.0585, F.S. Provides that the contractor may remit payment to the subcontractor within 30 working days after the contractor receives payment from the DEP. If the payments are made within this timeframe the penalties do not apply.
- Clarifies requirements for eligibility of advanced site cleanup applicants.
- Provides that site eligibility is not an entitlement to advanced cleanup funding or continued restoration funding.

CS by Environmental Preservation and Conservation on March 14, 2017:

- Removes unnecessary language that was inserted into the "emergency action" exception to the drycleaning rehabilitation scoring criteria. New subsection (14) in s. 376.308, F.S., already makes it clear that advance assessments are not subject to the scoring criteria.
- Increases the annual cap for the VCTC. The CS replaces the modification in the bill to the brownfield areas loan guaranty program, which had been intended to have the same practical effect.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Between lines 35 and 36
insert:
Section 1. Section 403.076, Florida Statutes, is created to read:
403.076 Short title.—Sections 403.076-403.078 may be cited as the "Public Notice of Pollution Act."
Section 2. Section 403.077, Florida Statutes, is created to read:

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403.077 Public notice of pollution; goals and findings.—

(1) It is a goal of the state that the public be timely notified of a discovered, reportable pollution release that may pose an immediate danger to the public health, safety, or welfare.

(2) The department has the authority and the duty to control and prohibit pollution of the air, land, and water of this state and has the primary responsibility to ensure that the public is aware of reportable pollution releases. Alerting the department about reportable pollution releases, within the timeframes and in the manner provided by this act, will better inform the department and the public regarding such releases and the need, if any, to take action to protect the public health, safety, and welfare.

(3) This act does not alter or affect the emergency management responsibilities of the Governor, the Division of Emergency Management, or the governing body of any political subdivision of the state pursuant to chapter 252.

Section 3. Section 403.078, Florida Statutes, is created to read:

403.078 Public notification of pollution.—

(1) DEFINITION.—As used in this section, the term "reportable pollution release" means the release or discharge of a substance from an installation to the air, land, or waters of the state which is discovered by the owner or operator of the installation, which is not authorized by law, and which is:

(a) Reportable to the State Watch Office within the Division of Emergency Management pursuant to department rules, permit, order, or variance;

(b) Reportable to the department or a contracted county pursuant to department rules governing storage tank systems under ss. 376.303, 376.321, and 376.322;

(c) Reportable to the department pursuant to department rules requiring notice for noncompliance from underground injection control systems where such noncompliance may endanger public health or the environment and has the potential to contaminate potable water wells outside the property boundaries of the installation;

(d) A hazardous substance at or above the quantity established in Table 302.4 of 40 C.F.R. s. 302.4, revised as of July 1, 2016, for such substance, for which notification is required by 40 C.F.R. s. 302.6; or

(e) An extremely hazardous substance pursuant to 40 C.F.R. s. 355.61, at or above the quantity established in Appendices A and B of 40 C.F.R. part 355, revised as of July 1, 2016, for such substance, for which notice is required by 40 C.F.R. s. 355.33.

(2) OWNER AND OPERATOR RESPONSIBILITIES.—

(a) In the event of a reportable pollution release, any person who is an owner or operator of the installation at which the reportable pollution release occurred must provide a notice containing the following information, to the extent known at the time of such notice, to the department within 24 hours after its discovery:

1. The name and address of the installation where the reportable pollution release occurred.

2. The name and title of the reporting person and the nature of his or her relationship to the installation.

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3. The identification numbers for any active department permits, variances, registrations, or orders that are relevant to the reportable pollution release.

4. The name and telephone number of a contact person for further information.

5. The substance released.

6. The estimated quantity of the substance released and, if applicable, the estimated quantity that has since been recovered.

7. The cause of the release.

8. The source of the release.

9. The location of the release.

10. The date, time, and duration of the release.

11. The medium into which the substance was released, including, but not limited to, the outdoor air, land, groundwater, aquifer, or specified waters or wetlands.

12. Whether the released substance has migrated to land or waters of the state outside the property boundaries of the installation and the location of such migration.

13. To the extent available, toxicological information associated with the substance released as specified on a safety data sheet or comparable source published by the Occupational Safety and Health Administration or the Centers for Disease Control and Prevention, or their successor agencies.

The owner or operator may also include in the notice any other information he or she wishes in order to assist in the protection of the public health, safety, and welfare.

(b) If multiple parties are subject to the notification

requirements based on a single reportable pollution release, a single notification made by one party in accordance with this section constitutes compliance on behalf of all parties subject to the requirement. However, if the notification is not made in accordance with this section, the department may pursue enforcement against all parties subject to the requirement.

(c) If, after providing notice pursuant to paragraph (a), the installation owner or operator determines that a reportable pollution release did not occur or that an amendment to the notice is warranted, the installation owner or operator may submit a letter to the department documenting such determination.

(d) If, after providing notice under paragraph (a), the installation owner or operator determines that a release subject to the noticing requirements of this act has migrated outside the property boundaries of the installation, the owner or operator, within 24 hours after such discovery, must provide an additional notice to the department. Such notice must comply with the requirements of paragraph (a) and specify the extent of the migration outside the property boundaries.

(3) DEPARTMENTAL RESPONSIBILITIES.—

(a) The department shall publish on a website accessible to the public all notices submitted by an owner or operator pursuant to subsection (2) within 24 hours of receipt.

(b) The department shall create an electronic mailing list for such notices and allow the public, including local governments, health departments, news media, and other interested persons, to subscribe to and receive periodic direct announcement of any notices submitted pursuant to subsection

(2). The department shall establish regional electronic mailing lists, such as by county or district boundaries, to allow subscribers to determine the notices they wish to receive by geographic area.

(c) The department shall establish an e-mail address and an online form as options for owners and operators to provide the notice specified in paragraphs (2)(a) and (b).

(4) ADMISSION OF LIABILITY OR HARM.—Providing notice under subsection (2) does not constitute an admission of liability or harm.

(5) VIOLATIONS.—For failure to provide the notification required by paragraph (2)(a) or paragraph (2)(d), the owner or operator shall be subject to the civil penalties specified in s. 403.121.

(6) ADOPTION OF RULES.—The department shall adopt rules necessary to administer the provisions of this section.

Section 4. Present paragraph (f) of subsection (4) of section 403.121, Florida Statutes, is redesignated as paragraph (g), and a new paragraph (f) is added to that subsection, to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(4) In an administrative proceeding, in addition to the penalties that may be assessed under subsection (3), the department shall assess administrative penalties according to the following schedule:

(f) For failure to provide required notice pursuant to s.

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403.078, up to $10,000 per day for each day an installation owner or operator is in violation of the section.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to pollution; creating s. 403.076, F.S.; providing a short title; creating s. 403.077, F.S.; providing goals and legislative findings; specifying authority of the Department of Environmental Protection; specifying that the act does not alter or affect the emergency management responsibilities of certain other governmental entities; creating s. 403.078, F.S.; defining the term "reportable pollution release"; requiring an owner or operator of an installation at which a reportable pollution release occurred to provide certain information to the department within 24 hours after the discovery of the release; authorizing the owner or operator to amend such notice; specifying compliance and enforcement requirements; requiring owners or operators to provide notice when a reportable pollution release migrates outside the property boundaries of the installation; requiring the department to publish such information in a specified manner; requiring the department to establish an electronic mailing list; requiring the department to provide a reporting form and e-mail address for such


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notice; specifying that providing a notice does not constitute an admission of liability or harm; specifying penalties for violations; requiring the department to adopt rules; amending s. 403.121, F.S.; specifying penalties for failure to provide required notice; amending

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576-03822-17

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 contaminated site cleanup; amending s. 376.3071, F.S.; providing an exception to prompt payment requirements to subcontractors and suppliers; amending s. 376.30713, F.S.; revising legislative findings; specifying that applicants for advanced cleanup of certain individual sites are not subject to application period limitations and need not pay a certain cost-sharing commitment; requiring applications by such applicants to be accepted on a first-come, first-served basis; providing that such applications are not subject to certain ranking provisions; specifying application requirements; providing construction; increasing the amount per year that the Department of Environmental Protection may use for advanced cleanup work; specifying expenditure limitations; revising duties of property owners and responsible parties with respect to voluntary cost-share agreements; amending s. 376.3078, F.S.; providing a statement of public interest; authorizing site assessments in advance of site priority ranking under certain circumstances; specifying criteria for sites to be eligible for such assessments; specifying what must be demonstrated through such assessments; specifying criteria for the assignment of assessment tasks; specifying funding limitations; specifying the

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prioritization of requests; amending s. 220.1845, F.S.; increasing the total amount of an authorization for tax credits; amending s. 376.30781, F.S.; increasing the total amount of tax credits the department is responsible for allocating; providing an effective date.

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

Section 1. Paragraph (h) of subsection (6) of section 376.3071, Florida Statutes, is amended to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(6) CONTRACTING AND CONTRACTOR SELECTION REQUIREMENTS.—

(h) The contractor, or the person to whom ~~which~~ the contractor has assigned its right to payment pursuant to paragraph (e), shall make prompt payment to subcontractors and suppliers for their costs associated with an approved contract pursuant to s. 287.0585, except that the contractor, or the person to whom the contractor has assigned its right to payment pursuant to paragraph (e), may remit payments to subcontractors and suppliers within 30 working days after the contractor's receipt of payment by the department before the penalties required by s. 287.0585(1) are applicable.

Section 2. Paragraphs (a) and (c) of subsection (1) and subsections (2) and (4) of section 376.30713, Florida Statutes, are amended to read:

376.30713 Advanced cleanup.—

(1) In addition to the legislative findings provided in s.

376.3071, the Legislature finds and declares:

(a) That the inability to conduct site rehabilitation in advance of a site's priority ranking pursuant to s. 376.3071(5)(a) may substantially impede or prohibit property redevelopment, property transactions, or the proper completion of public works projects.

(c) It is in the public interest and of substantial economic benefit to the state to provide an opportunity for site rehabilitation to be conducted on a limited basis at contaminated sites, in advance of the site's priority ranking, to encourage redevelopment and facilitate property transactions or public works projects.

(2) The department may approve an application for advanced cleanup at eligible sites, including applications submitted pursuant to paragraph (c), notwithstanding the site's priority ranking established pursuant to s. 376.3071(5)(a), pursuant to this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies as an applicant under this section.

(a) Advanced cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30 shall be for the fiscal year beginning July 1. An application must consist of:

1. A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable under this section along with proof of the ability to pay the cost share. The department shall determine whether the cost savings demonstration is acceptable. Such determination is not subject to chapter 120.

a. Applications for the aggregate cleanup of five or more sites may be submitted in one of two formats to meet the cost-share requirement:

(I) For an aggregate application proposing that the department enter into a performance-based contract, the applicant may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the requirement.

(II) For an aggregate application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application the percentage of cost savings in the aggregate that is being provided to the department for cleanup of the sites under the application compared to the cost of cleanup of those same sites using the current rates provided to the department by the proposed agency term contractor.

b. Applications for the cleanup of individual sites may be submitted in one of two formats to meet the cost-share requirement:

(I) For an individual application proposing that the department enter into a performance-based contract, the applicant may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the requirement.

(II) For an individual application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application a 25-percent cost savings to the department for cleanup of the site under the application compared to the cost of cleanup of the same site using the current rates provided to the department by the

proposed agency term contractor.

2. A nonrefundable review fee of $250 to cover the administrative costs associated with the department's review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

5. A department site access agreement, or similar agreements approved by the department that do not violate state law, entered into with the property owner or owners, as applicable, and evidence of authorization from such owner or owners for petroleum site rehabilitation program tasks consistent with the proposed course of action where the applicant is not the property owner for any of the sites contained in the application.

The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection or any other provision of this section is not an entitlement to advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The certification must be submitted with the application.

(b) The department shall rank the applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who proposes the

highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and that exceed the funds available to commit to all such proposals during the advanced cleanup application period, the department shall proceed to rerank those applicants. Those applicants submitting identical cost-sharing proposals that exceed funding availability must be so notified by the department and offered the opportunity to raise their individual cost-share commitments, in a period specified in the notice. At the close of the period, the department shall proceed to rerank the applications pursuant to this paragraph.

(c) Applications for the advanced cleanup of individual sites scheduled for redevelopment are not subject to the application period limitations or the requirement to pay 25 percent of the total cleanup cost specified in paragraph (a) or to the cost-sharing commitment specified in paragraph (1)(d). Applications must be accepted on a first-come, first-served basis and are not subject to the ranking provisions of paragraph (b). Applications for the advanced cleanup of individual sites scheduled for redevelopment must include:

1. A nonrefundable review fee of $250 to cover the administrative costs associated with the department's review of the application.

2. A limited contamination assessment report. The report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting and preparing the report are not refundable from the Inland Protection Trust Fund.

3. A proposed course of action for cleanup of the site.

4. If the applicant is not the property owner for any of the sites contained in the application, a department site access agreement, or a similar agreement approved by the department and not in violation of state law, entered into with the property owner or owners, as applicable, and evidence of authorization from such owner or owners for petroleum site rehabilitation program tasks consistent with the proposed course of action.

5. A certification to the department stating that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The advanced cleanup contract must include redevelopment and site rehabilitation milestones.

6. Documentation, in the form of a letter from the local government having jurisdiction over the area where the site is located, which states that the local government is in agreement with or approves the proposed redevelopment and that the proposed redevelopment complies with applicable law and requirements for such redevelopment.

7. A demonstrated reasonable assurance that the applicant has sufficient financial resources to implement and complete the redevelopment project.

Site eligibility under this section is not an entitlement to advanced cleanup funding or continued restoration funding.

(4) The department may enter into contracts for a total of up to $30 ~~$25~~ million of advanced cleanup work in each fiscal year. Up to $5 million of these funds may be designated by the department for advanced cleanup of individual sites scheduled for redevelopment under paragraph (2)(c).

(a) ~~However,~~ A facility or an applicant who bundles multiple sites as specified in subparagraph (2)(a)1. may not be approved for more than $5 million of cleanup activity in each fiscal year.

(b) A facility or an applicant applying for advanced cleanup of individual sites scheduled for redevelopment pursuant to paragraph (2)(c) may not be approved for more than $1 million of cleanup activity in any one fiscal year.

(c) A property owner or responsible party may enter into a voluntary cost-share agreement in which the property owner or responsible party commits to bundle multiple sites and lists the facilities that will be included in those future bundles. The facilities listed are not subject to agency term contractor assignment pursuant to department rule. The department must reserve ~~reserves~~ the right to terminate or amend the voluntary cost-share agreement for any identified site under the voluntary cost-share agreement if the property owner or responsible party fails to submit an application to bundle any site, not already covered by an advance cleanup contract, under such voluntary cost-share agreement within three ~~a~~ subsequent open application periods or 18 months, whichever period is shorter, ~~period~~ during which it is eligible to participate. The property owner or responsible party must agree to conduct limited site assessments on the identified sites within 12 months after the execution of the voluntary cost-share agreement. For the purposes of this section, the term "facility" includes, but is not limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

Section 3. Subsection (14) is added to section 376.3078, Florida Statutes, to read:

376.3078 Drycleaning facility restoration; funds; uses; liability; recovery of expenditures.—

(14) ADVANCED SITE ASSESSMENT.—It is in the public interest, and of substantial environmental and economic benefit to the state, to provide an opportunity to conduct site assessment on a limited basis at contaminated sites in advance of the ranking of the sites on the priority list as specified in subsection (8).

(a) A real property owner who is eligible for site rehabilitation at a facility that has been determined eligible for the drycleaning solvent cleanup program under this section may request an advanced site assessment, and the department may authorize the performance of a site assessment in advance of the ranking of the site on the priority list as specified in subsection (8), if the following criteria are met:

1. The site assessment information would provide new information that would be sufficient for the department to better evaluate the actual risk of the contamination, thereby reducing the risk to public health and the environment;

2. The property owner agrees:

a. To implement the appropriate institutional controls allowed by department rules adopted pursuant to subsection (4) at the time the property owner requests the advanced site assessment; and

b. To implement and maintain, upon completion of the cleanup, the required institutional controls, or a combination of institutional and engineering controls, when the site meets

the site rehabilitation criteria for closure with controls in accordance with department rules adopted pursuant to subsection (4);

3. Current conditions at the site allow the site assessment to be conducted in a manner that will result in cost savings to the Water Quality Assurance Trust Fund;

4. There is sufficient money in the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program to pay for the site assessment; and

5. In accordance with subsection (3), access to the site is provided and the deductible is paid.

(b) A site may be assessed out of priority ranking order when, at the department's discretion, the site assessment will provide a cost savings to the program.

(c) An advanced site assessment must incorporate risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner, in accordance with subsection (4). The site assessment must also be sufficient to estimate the cost and determine the proposed course of action toward site cleanup. Advanced site assessment activities performed under this subsection shall be designed to affirmatively demonstrate that the site meets one of the following findings based on the following specified criteria:

1. Recommend remedial action to mitigate risks that, in the judgment of the department, are a threat to human health or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment;

2. Recommend additional groundwater monitoring to support

natural attenuation monitoring or long-term groundwater monitoring; or

3. Recommend "no further action," with or without institutional controls or institutional and engineering controls, for those sites that meet the "no further action" criteria department rules adopted pursuant to subsection (4).

If the site does not meet one of the findings specified in subparagraphs 1.-3., the department shall notify the property owner in writing of this decision, and the site shall be returned to its priority ranking order in accordance with its score.

(d) Advanced site assessment program tasks shall be assigned by the drycleaning solvent cleanup program. In addition to the provisions in paragraph (a), the assignment of site assessment tasks shall be based on the department's determination of contractor logistics, geographical considerations, and other criteria that the department determines are necessary to achieve the most cost-effective approach.

(e) Available funding for advanced site assessments may not exceed 10 percent of the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program.

(f) The total funds committed to any one site may not exceed $70,000.

(g) The department shall prioritize the requests for advanced site assessment, based on the date of receipt and the environmental and economic value to the state, until 10 percent of the annual Water Quality Assurance Trust Fund appropriation,

as provided in paragraph (e), has been obligated.

Section 4. Paragraph (f) of subsection (2) of section 220.1845, Florida Statutes, is amended to read:

220.1845 Contaminated site rehabilitation tax credit.—

(2) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

(f) The total amount of the tax credits which may be granted under this section is $21.6 million in the 2015-2016 fiscal year, ~~and~~ $5 million in the 2016-2017 fiscal year, and $10 million annually thereafter.

Section 5. Subsection 4 of section 376.30781, Florida Statutes, is amended to read:

376.30781 Tax credits for rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas; application process; rulemaking authority; revocation authority.—

(4) The Department of Environmental Protection is responsible for allocating the tax credits provided for in s. 220.1845, which may not exceed a total of $21.6 million in tax credits in the 2015-2016 fiscal year, ~~and~~ $5 million in tax credits in the 2016-2017 fiscal year, and $10 million in tax credits annually thereafter.

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 1018
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on the Environment and Natural Resources); Environmental Preservation and Conservation Committee; and Senators Grimsley and Galvano
SUBJECT:	Contaminated Site Cleanup
DATE:	April 26, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	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 - Substantial Changes

I. Summary:

CS/CS/SB 1018 creates the Public Notice of Pollution Act. The bill defines a reportable pollution release as a release to the air, land, or water that is discovered by the owner or operator of an installation, is not authorized by law, and is:

- Reportable to the State Watch Office;
- Reportable to the Department of Environmental Protection (DEP) or a contracted county pursuant to rules governing storage tank systems;
- Reportable to the DEP pursuant to rules governing underground injection control systems;
- A hazardous substance; or
- An extremely hazardous substance.

The owner or operator of any installation where a reportable pollution release occurs must provide a notice of the release to the DEP. The notice must be submitted to the DEP within 24 hours after discovery of the reportable pollution release and must contain detailed information described in the bill about the installation, the substance, and the circumstances surrounding the release. The bill also requires additional notice to the DEP if a release migrates outside the property boundaries of the installation.

The bill requires the DEP to publish each notice to the Internet within 24 hours after the DEP receives it. The DEP must also create a system for electronic mailing that allows interested

parties to subscribe to and receive direct announcements of notices received by the DEP. The DEP must establish an email address and an online form so that installation owners and operators are able to submit a notice of a reportable pollution release electronically. The bill provides that submitting a notice of a reportable pollution release does not constitute an admission of liability or harm. Finally, the bill provides for $10,000 per day in civil penalties for violations of these notice requirements and authorizes the DEP to adopt rules to administer these provisions.

The bill provides for the advancement ahead of priority ranking for the rehabilitation of individual petroleum contaminated sites proposed for redevelopment; the elimination of the 25 percent cost-share requirement for the advanced cleanup of such sites; a $5 million increase in the annual funding available to the Department of Environmental Protection (DEP) for petroleum rehabilitation advance cleanup work; advanced site assessments for certain sites contaminated with drycleaning solvents; and a $5 million increase in the amount of annual voluntary cleanup tax credit funding DEP is authorized to allocate.

The bill increases expenditures from the Inland Protection Trust Fund by $5 million annually. The bill will reduce revenues deposited into the General Revenue Fund by $5 million annually based on a higher volume of tax credits. The DEP will incur minimal costs as a result of the newly established reporting requirements and initiation of the rule making process for pollution events.

II. Present Situation:

Public Notice

Many commercial, industrial, agricultural, and utility operations and entities are required to report various releases, discharges, or emissions as a condition of permitted operations or pursuant to law or rule. Under state law, to the extent notification is required, it typically must be made to the Department of Environmental Protection (DEP).[1] In some cases, notice to the DEP is provided to the State Watch Office, an emergency communications center in the Division of Emergency Management. The State Watch Office, also known as the State Warning Point, serves as Florida's primary point of contact for a wide variety of both natural and man-made emergencies. It serves as the contact point in Florida for communications between local governments and emergency agencies of both the state and federal governments and also provides emergency information to newspapers and radio and television stations.[2] Examples of notification to the State Watch Office include DEP rule requirements for notification of petroleum discharges,[3] wastewater discharges,[4] and releases of hazardous substances,[5] and a DEP statutory and rule requirement for notification of a discharge of drycleaning solvents.[6] Requirements to notify the State Watch Office may also appear in DEP orders, permits, or variances, if required or authorized.

[1] *See, e.g.*, ss. 377.371(2), 376.30702, 403.862(1)(b), and 403.93345(5), F.S.; Fla. Admin. Code R. 62S-6.022.
[2] Division of Emergency Management, *Florida State Watch Office*, http://www.floridadisaster.org/Response/Operations/swp.htm (last visited February 28, 2017); *see, e.g.*, Fla. Admin. Code R. 27P-14.011.
[3] Fla. Admin. Code R. 62-780.210(1) and Fla. Admin. Code R. 62S-6.022.
[4] Fla. Admin. Code R. 62-620.610 and Fla. Admin. Code R. 62-604.550
[5] Fla. Admin. Code R. 62-150.300.
[6] Section 376.3078(9)(c) and Fla Admin. Code R. 62-780.210(2).

Notifications directly to the DEP or a county under contract with the DEP to perform compliance verification activities are required for certain releases or discharges of pollutants, including petroleum products, pesticides, ammonia, chlorine, hazardous substances, and specified mineral acids from underground or aboveground storage tanks.[7] Notification is also required to be made to the DEP of any noncompliance with an underground injection control permit that may endanger health or the environment.[8] Requirements for notifications of the release of hazardous substances in DEP rule define "hazardous substance" and "extremely hazardous substance" by referencing definitions in federal regulations.[9] Those federal regulations contain extensive lists of substances defined as hazardous substances and extremely hazardous substances.[10] In certain circumstances, statutes and rules require the owner or operator of an installation to directly notify a local government or the public of actions taken or conditions or occurrences at installations.[11]

At present, there is no comprehensive notice requirement that all releases of substances be reported under state law. There is also no requirement in current law that all such reporting be accessible to the public.

Public Notice Rule

In response to recent pollution incidents, the DEP initiated rulemaking in 2016 to establish a requirement for notification of releases of pollution from installations throughout the state. On September 27, 2016, the DEP published an emergency rule. The following day, the DEP published a notice of proposed rule with the same language. The emergency rule was in effect during the development of the proposed rule. The proposed rule would have:

- Required owners and operators of installations[12] to provide a notification of pollution within 24 hours of the incident resulting in the pollution or the discovery of the pollution to:
  - The DEP;
  - Local government officials; and
  - The general public.[13] Notification to the general public under the proposed rule would have required an owner or operator to provide notice of the pollution to local broadcast television affiliates and a newspaper of general circulation in the area of the contamination.
- Required further notifications by owners and operators of installations on the status of the pollution.
- Provided that failure to give a notification of pollution subjected an owner or operator to statutory penalties of up to $10,000 per day.[14]

[7] Sections 376.303 and 376.322, F.S., Fla. Admin. Code R. 62-761.440, Fla. Admin. Code R. 62-762.441.
[8] Fla. Admin. Code R. 62-528.307(1)(x).
[9] Fla. Admin. Code R. 62-150.200 and Fla. Admin. Code R. 62-150.300.
[10] 40 C.F.R. s. 302.4 and 40 C.F.R. part 355, Appendices A and B.
[11] *See, e.g.,* s. 376.707(11), F.S., Fla. Admin. Code R. 62-550.828, Fla. Admin. Code R. 62-560.410(1)(a), Fla. Admin. Code R. 62-761.405(3) and (4), Fla. Admin. Code R. 62-761.430, Fla. Admin. Code R. 62-761.440, Fla. Admin. Code R. 62-762.411, Fla. Admin. Code R. 62-762.431, Fla. Admin. Code R. 62-762.441, Fla. Admin. Code R. 62-560.400, Fla. Admin. Code R. 62-560.410, Fla. Admin. Code R. 62-560.430.
[12] An installation is defined in s. 403.031(4), F.S., as "any structure, equipment, or facility, or appurtenances thereto, or operation which may emit air or water contaminants in quantities prohibited by rules of the department."
[13] Proposed Rule 62-4.161, Florida Administrative Register Vol. 42/No. 189.
[14] *Id.*

Following publication of the proposed rule, the DEP received three written proposals for a lower cost regulatory alternative (LCRA) to the rule. The DEP prepared a statement of estimated regulatory costs (SERC) for the rule in response to the proposed LCRAs, as required by s. 120.541(1), F.S.[15] In the SERC, the DEP estimated regulatory costs of $182,000 per year, a calculation based on the number of notifications made under the newly-minted emergency rule. The LCRAs proposed that the rule be altered to require the DEP to provide notification to local government officials and the general public and that notification requirements under the rule be loosened. The DEP rejected the proposals because it determined that installations in compliance with law would have no costs under the rule and other proposals were inconsistent with the intent of the rule.[16]

A notice of change for the proposed rule was published on November 15, 2016. In the change notice, the DEP altered the proposed rule by expanding and clarifying the operation of the notice requirement. The DEP added the following:

- An intent section.
- A reportable release as the trigger for the requirement to provide notice; reportable release defined in the rule as a release of a substance not authorized by law which is discovered by an owner or operator after the effective date of the rule and which is:
  - Reportable to the State Watch Office or to the DEP or a county administering a DEP program under certain rules; or
  - A hazardous or extremely hazardous substance at or above quantities established in certain federal regulations.
- Specific information that must be contained in the notice and the manner the notice must be submitted to various parties.
- Language providing that as long as one party provides notice in compliance with the rule, then other parties are not required to provide notice for the same reportable release.[17]

Rule Challenge

On November 18, 2016, several commercial associations filed an administrative challenge to the proposed rule in *Associated Industries of Florida, Inc. et al. v. Department of Environmental Protection*.[18] The petitioners argued that the rule violated statutory requirements and was invalid on four grounds:

- The DEP materially failed to follow the applicable rulemaking procedures and requirements;
- The DEP exceeded its grant of rulemaking authority;
- The proposed rule enlarges, modifies, or contravenes the specific provisions of law implemented; and
- The proposed rule imposes regulatory costs on the regulated person, county, or city, which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.[19]

[15] Statement of Estimated Regulatory Costs, Proposed Rule 62-4.161, *available at* http://dep.state.fl.us/pollutionnotice/SERC%20for%20Rule%2062-4.161%20w%20attachments.pdf.
[16] *Id.*
[17] Notice of Change for Proposed Rule 62-4.161, Florida Administrative Register Vol. 42/No. 222.
[18] Case No. 16-6889RP (Fla. DOAH 2016).
[19] Section 120.52(8), F.S.

On December 30, 2016, the administrative law judge (ALJ) entered a final order, holding that the DEP lacked the rulemaking authority for the proposed rule. The final order concluded that the authorities cited by the DEP as providing it with the statutory authority to adopt the rule are general grants of authority and not specific enough to authorize the DEP to require that owners and operators of installations provide notices to local governments, the general public, and broadcast media.[20] The ALJ also found that the proposed rule enlarges the provisions of law implemented because the statutory provisions cited by the DEP did not contain specific language regarding reporting requirements for the release of contaminants. The ALJ concluded that the proposed rule was an invalid exercise of delegated legislative authority, affirming the petitioners' grounds for challenging the rule.[21] The ALJ did not evaluate the issue of whether the LCRAs were properly rejected by the DEP because he deemed the rule invalid on other grounds.[22]

The DEP has not appealed the final order. The rule, therefore, is invalid because there is insufficient statutory authority for the DEP to adopt this notice of pollution requirement by rule. Immediately following the invalidation of the DEP's proposed rule, the department began providing links on its website regarding notices of releases it receives from permitted and non-permitted facilities throughout the state.[23] The DEP continues to maintain an email list for those who want to subscribe to notices of pollution releases.[24] Upon its receipt of a notice of pollution from an installation, the DEP sends it to email list subscribers, local governments, and media outlets,[25] fulfilling the function the proposed rule had required of owners and operators of installations for the subset of all releases that are required to be reported to the DEP under current law.

Petroleum Restoration Program

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices.[26] These discharges pose a significant threat to groundwater quality, and Florida relies on groundwater for 90 percent of its drinking water.[27] The identification and cleanup of petroleum contamination is particularly challenging due to Florida's diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.[28]

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[20] Final Order, *Associated Industries of Florida, Inc. et al. v. Department of Environmental Protection*, Case No. 16-6889RP (Fla. DOAH 2016), 13, 16, *available at* https://www.doah.state.fl.us/ROS/2016/16006889.pdf.
[21] *Id.* at 16.
[22] *Id.* at 18.
[23] DEP, *Notice of an Incident or Discovery of Pollution*, http://dep.state.fl.us/pollutionnotice/ (last visited March 5, 2017).
[24] DEP, *Notice of an Incident or Discovery of Pollution*, http://lists.dep.state.fl.us/mailman/listinfo/pollution.notice (last visited March 5, 2017).
[25] DEP, *Notice of an Incident or Discovery of Pollution*, http://lists.dep.state.fl.us/pipermail/pollution.notice/ (last visited March 5, 2017).
[26] Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012), http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/geninfo/2012Program_Briefing_11Jan12.pdf.
[27] *Id.*
[28] *Id.*

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases.[29] The Department of Environmental Protection (DEP) is responsible for regulating these storage tank systems. In 1986, the Legislature enacted the State Underground Petroleum Environmental Response Act (SUPER Act) to address the pollution problems caused by leaking underground petroleum storage systems.[30] The SUPER Act authorized the department to establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of contaminated areas, which led to the creation of the Petroleum Restoration Program (Restoration Program). The Restoration Program establishes the requirements and procedures for cleaning up contaminated land as well as the circumstances under which the state will pay for the cleanup.

Abandoned Tank Restoration Program

In 1990, the legislature established the Abandoned Tank Restoration Program (ATRP). The ATRP was created to address the contamination at facilities that had out-of-service or abandoned tanks as of March 1990. The ATRP originally had a one-year application period, but the deadline was subsequently extended to 1992, then 1994. In 1996, the legislature waived the deadline indefinitely for owners who are unable to pay for the closure of abandoned tanks. To be eligible for the ATRP, applicants must certify that the petroleum system has not stored petroleum products for consumption, use, or sale since March 1, 1990.[31] In 2016, the legislature eliminated the June 30, 1996 application deadline.[32]

Site Rehabilitation

Florida law requires land contaminated by petroleum to be cleaned up, or rehabilitated, so that the concentration of each contaminant in the ground is below a certain level.[33] These levels are known as Cleanup Target Levels (CTLs).[34] Once the CTLs for a contaminated site[35] has been attained, rehabilitation is complete and the site may be closed. When a site is closed, no further cleanup action is required unless the contaminant levels increase above the CTLs or another discharge occurs.[36]

State Funding Assistance for Rehabilitation

In 2012, the average cost to rehabilitate a site was approximately $400,000, but some sites may cost millions of dollars to rehabilitate.[37] Under Florida law, an owner of contaminated land (site

[29] Ch. 83-310, Laws of Fla.
[30] Ch. 86-159, Laws of Fla.
[31] Chapter 89-188, Laws of Fla.
[32] Section 376.305(6), F.S.
[33] Sections 376.301(8) and 376.3071(5), F.S.
[34] *Id.*
[35] A "site" is any contiguous land, sediment, surface water, or groundwater area upon or into which a discharge of petroleum or petroleum products has occurred or for which evidence exists that such a discharge has occurred. The site is the full extent of the contamination, regardless of property boundaries.
[36] Florida Department of Environmental Protection, Division of Waste Management, *Petroleum Contamination Cleanup and Discharge Prevention Programs* (2012), http://www.dep.state.fl.us/waste/quick_topics/publications/pss/pcp/geninfo/2012Program_Briefing_11Jan12.pdf.
[37] *Id*.

owner) is responsible for rehabilitating the land unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.[38] Over the years, different eligibility programs have been implemented to provide state financial assistance to certain site owners and responsible parties for site rehabilitation.

To receive rehabilitation funding assistance, a site must qualify under one of these programs, which are outlined in the following table:

Table 1: State Assisted Petroleum Cleanup Eligibility Programs

Program Name	Program Dates	Program Description
Early Detection Incentive Program (EDI) (s. 376.30371(9), F.S.)	Discharges must have been reported between July 1, 1986, and December 31, 1988, to be eligible	• First state-assisted cleanup program • 100 percent state funding for cleanup if site owners reported releases • Originally gave site owners the option of conducting cleanup themselves and receiving reimbursement from the state or having the state conduct the cleanup in priority order • Reimbursement option was phased out, so all cleanups are now conducted by the state
Petroleum Liability and Restoration Insurance Program (PLRIP) (s. 376.3072, F.S.)	Discharges must have been reported between January 1, 1989, and December 31, 1998, to be eligible	• Required facilities to purchase third party liability insurance to be eligible • Provides varying amounts of state-funded site restoration coverage
Abandoned Tank Restoration Program (ATRP) (s. 376.305(6), F.S.)	For petroleum storage systems that have not stored petroleum since March 1, 1990[39]	Provides 100 percent state funding for cleanup, less deductible, at facilities that had out-of-service or abandoned tanks as of March 1990
Innocent Victim Petroleum Storage System Restoration Program (s. 376.30715, F.S.)	The application period began on July 1, 2005, and remains open	Provides 100 percent state funding for a site acquired before July 1, 1990, that ceased operating as a petroleum storage or retail business before January 1, 1985
Petroleum Cleanup Participation Program (PCPP) (s. 376.3071(13), F.S.)	Remains open	• Created to provide financial assistance for sites that had missed all previous opportunities • Only discharges that occurred before 1995 were eligible • Site owner or responsible party must pay 25 percent of cleanup costs[40] • Originally had a $300,000 cap on the amount of coverage, which was raised to $400,000 beginning July 1, 2008

[38] Section 376.308, F.S.
[39] The ATRP originally had a one-year application period, but the deadline was extended. The deadline is now waived indefinitely for site owners who are financially unable to pay for the closure of abandoned tanks. Section 376.305(6)(b), F.S.
[40] The 25 percent copay requirement can be reduced or eliminated if the site owner and all responsible parties demonstrate that they are financially unable to comply. Section 376.3071(13)(c), F.S.

Table 1: State Assisted Petroleum Cleanup Eligibility Programs		
Program Name	**Program Dates**	**Program Description**
Consent Order (aka "Hardship" or "Indigent") (s. 376.3071(7)(c), F.S.)	The program began in 1986 and remains open	• Created to provide financial assistance under certain circumstances for sites that the Department initiates an enforcement action to clean up • An agreement is formed whereby the Department conducts the cleanup and the site owner or responsible party pays for a portion of the costs

As of October 2015, there are 19,128 sites eligible for state funding through one of the above programs.[41] Of these, approximately 8,603 have been rehabilitated and closed, approximately 5,576 are currently undergoing some phase of rehabilitation, and approximately 4,949 await rehabilitation. [42]

Inland Protection Trust Fund

To fund the cleanup of contaminated sites, the SUPER Act created the Inland Protection Trust Fund (IPTF).[43] The IPTF is funded by an excise tax per barrel on petroleum and petroleum products in or imported into the state.[44] The amount of the excise tax per barrel is determined by a formula, which is dependent upon the unobligated balance of the IPTF.[45] Each year, approximately $200 million from the excise tax is deposited into the IPTF to fund restoration of petroleum contaminated sites.[46] At present, the excise tax is 80 cents per barrel.[47]

Funding for rehabilitation of a site is based on a relative risk scoring system. Each funding-eligible site receives a numeric score based on the threat the site contamination poses to the environment or to human health, safety, or welfare.[48] Sites currently in the Restoration Program range in score from 5 to 115 points, with a score of 115 representing a substantial threat and a score of 5 representing a very low threat.[49] Sites are rehabilitated in priority order beginning with the highest score, with funding based on available budget.[50] The department sets the priority score funding threshold, which is the minimum score a site must be assigned to receive restoration funding at a particular point in time.[51]

[41] DEP, *2016 House Bill 697 Agency Analysis*, (December 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[42] *Id*.
[43] Section 376.3071(3)-(4), F.S.
[44] Sections 206.9935(3) and 376.3071(6), F.S.
[45] The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between $100 million and $150 million; 60 cents if the unobligated balance is between $50 million and $100 million; and 80 cents if the unobligated balance is $50 million or less. Section 206.9935(3), F.S.
[46] DEP, *2016 House Bill 697 Agency Analysis*, (December 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[47] Department of Revenue, *Pollutants Tax*, http://dor.myflorida.com/dor/taxes/fuel/pollutants.html (last visited March 11, 2017).
[48] Section 376.3071(5), F.S., Fla. Admin. Code R. 62-771.100.
[49] DEP, *2016 House Bill 697 Agency Analysis*, (December 15, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[50] Fla. Admin. Code R. 62-771.300.
[51] DEP, *2015 Senate Bill 314 Agency Analysis*, (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

Expediting Site Rehabilitation

Eligible contaminated sites typically receive state rehabilitation funding in priority order based on their numeric score. However, there are some programs that allow sites to receive funding for rehabilitation or site closure out of priority score order, as long as the sites are eligible under one of the programs in Table 1. Two of these programs are Advanced Cleanup and Low Scored Site Initiative.

Advanced Cleanup

The advanced cleanup (formerly known as Preapproved Advanced Cleanup) of petroleum contaminated sites was begun in 1996 to allow an eligible petroleum contamination site to receive state rehabilitation funding even if the site's priority score did not fall within the threshold currently being funded.[52] The purpose of creating the advanced cleanup process was to facilitate property transactions and public works projects on contaminated sites.[53] To obtain authorization for advanced cleanup, a site must be eligible for state restoration funding under the Early Detection Incentive Program (EDI), the Petroleum Liability and Restoration Insurance Program (PLRIP), or the Abandoned Tank Restoration Program (ATRP).[54]

Advanced cleanup is also available for discharges eligible for restoration funding under the Petroleum Cleanup Participation Program (PCPP) for the state's cost share of site rehabilitation.[55] An application for advanced cleanup for a discharge eligible under PCPP must include a cost-sharing commitment for funding under the advanced cleanup criteria in addition to the 25 percent copayment requirement of the PCPP.

To apply for advanced cleanup of petroleum contamination, a facility owner or operator or the person otherwise responsible for site rehabilitation must submit an advanced cleanup application between May 1 and June 30, for the fiscal year beginning July 1, or between November 1 and December 31. The application must consist of:

- A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable along with proof of the ability to pay the cost share. Applications submitted for cleanup may be submitted in one of two formats to meet the cost-share requirement:
  - The applicant may use a commitment to pay, a demonstrated cost savings to DEP, or both to meet the requirement; or
  - For an application relying on a demonstrated cost savings to the DEP, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application a 25 percent cost savings[56] to the DEP for cleanup of the site under the application compared to the cost of cleanup of the same site using the current rates provide to the DEP by the proposed agency term contractor. The DEP shall determine whether the cost savings demonstration is acceptable.

[52] Section 376.30713(1), F.S.
[53] *Id.*
[54] Section 376.30713(1)(d), F.S.
[55] For PCPP sites, Advanced Cleanup is only available for discharge cleanup if the 25 percent copay requirement of PCPP has not been reduced or eliminated pursuant to s. 376.3071(13)(d). s. 376.30713(1)(d), F.S.
[56] For aggregate applications of five sites or more the percentage is not specified.

- A nonrefundable review fee of $250 to cover the DEP's administrative costs to review the application;
- A limited contamination assessment report;
- A proposed course of action; and
- A DEP site access agreement, or similar agreement.

The DEP ranks applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who proposes the highest percentage of cost sharing. In some circumstances where applicants propose the same percentage of cost sharing and funds are not available to commit to all of such proposals, applicants may raise their individual cost share commitments and the DEP will rerank the applications.[57]

The DEP negotiates with applicants based on the DEP's rankings. If the DEP and an applicant agree on the course of action, the DEP may enter into a contract with the applicant and negotiate the terms and conditions of the contract. Advanced cleanup must be conducted pursuant to requirements of the Inland Protection Trust Fund and the DEP rule. If the terms of the advanced cleanup contract are not fulfilled, the applicant forfeits any right to future payment for any site rehabilitation work conducted under the contract.[58]

The DEP may enter into contracts for a total of up to $25 million of advanced cleanup work in each fiscal year.[59] All funds collected by the DEP pursuant contracts for advanced cleanup work must be deposited into the Inland Protection Trust Fund to be used in the advanced cleanup of petroleum contaminated sites.[60]

Low Scored Site Initiative

The Low Scored Site Initiative (LSSI) was created to expedite the assessment and closure of sites that contain minimal contamination and that are not a threat to human health or the environment. Low scored sites have a priority ranking score of 29 points or less.[61] These sites are eligible for state funds of up to $70,000 each for assessment and limited remediation. The DEP may not encumber more than $15 million for LSSI in any fiscal year.[62]

Drycleaning Solvent Cleanup Program

The Florida Legislature has established a state-funded program to cleanup properties that are contaminated as a result of operations of a drycleaning facility or wholesale supply facility (Ch. 376, F.S.). The program is administered by the DEP. The legislation was supported by the drycleaning industry to address environmental, economic, and liability issues resulting from drycleaning solvent contamination. The program limits the liability of the owner, operator and

[57] Section 376.30713(2)(b), F.S.
[58] Section 376.30713(3), F.S.
[59] Section 376.30713(4), F.S.
[60] Section 376.30713(5), F.S.
[61] Section 376. 3071(12)(b), F.S.
[62] *Id.*

real property owner of drycleaning or wholesale supply facilities for cleanup of drycleaning solvent contamination if the parties meet the conditions stated in the law.[63]

Funding: Taxes and Fees

A fund has been established to pay for costs related to the cleanup of these properties. The source of revenue for the fund is a gross receipts sales tax, a tax on perchloroethylene sold to or imported by a drycleaning facility, and annual registration fees.[64]

Program Application

The application period for entry into the Drycleaning Solvent Cleanup Program ended December 31, 1998. Applications to the Drycleaning Solvent Cleanup Program are no longer being accepted.[65]

Eligibility and Priority Ranking

Section 376.3078(3), F.S., identifies certain criteria that must be met in order for a site to be eligible, and to remain eligible, for the program. Eligibility in this program does not relieve the owner, operator, or real property owner from federal actions or from current waste management requirements. The score that the site receives determines the order in which the DEP will begin site rehabilitation activities. For eligible sites, costs incurred by the state for site rehabilitation will be absorbed at the expense of the fund minus a deductible amount as specified in the law.[66]

Scoring System

The DEP uses a scoring system to rank and prioritize eligible sites for rehabilitation. Sites are assigned points based upon statutory point values for each site's characteristics.[67] The DEP has developed a priority list of sites for rehabilitation based upon the scoring system, with ranking commensurate with the size of a site's score.[68] Regardless of scoring, however, any site having a condition that exhibits a fire or explosion hazard is highest priority for rehabilitation. The following site characteristics are assigned points in the scoring system:

- The threat the site poses to drinking water supplies based on;
  - The size of the largest uncontaminated public water supply well located within one mile of the site;
  - The size of the largest uncontaminated private drinking water well located within one mile of the site;
  - The size of the largest contaminated public water supply well located within one mile of the site;
  - The size of the largest contaminated private drinking water well located within one mile of the site;
  - The proximity of both uncontaminated and contaminated water wells to the site;

[63] Florida Department of Environmental Protection, *Dry Cleaning Solvent Cleanup Program,* http://www.dep.state.fl.us/waste/quick_topics/publications/wc/drycleaning/information/General-Information_04Jan17.pdf
[64] *Id.*
[65] *Id.*
[66] Section 376.3078(3)(e), F.S.
[67] Section 376.3078(7), F.S.
[68] Section 376.3078(8), F.S.

- The vulnerability of groundwater to contamination from the site;
- The Aquifer Classification for the aquifer area where the site is located;
- The concentrations of chlorinated drycleaning solvents in the soil of the site; and
- The location of the site if it is within:
  - One half mile of an uncontaminated surface water body used as a permitted public water system;
  - One half mile of an Outstanding Florida Water body;
  - One quarter mile of a surface water body; or
  - One quarter mile of an area of critical state concern.

Scored sites are incorporated into the priority list on a quarterly basis with the ranking of all sites adjusted accordingly. Assignments for program tasks to be conducted by state contractors are made according to the current priority list and based on criteria the DEP determines is necessary to achieve cost-effective site rehabilitation. Regardless of the score of a site, the DEP may initiate emergency action for those sites that are a threat to human health and safety, or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment.[69]

Contaminated Site Cleanup Criteria

The DEP rules establish criteria for the purpose of determining, on a site-specific basis, a site rehabilitation program and the level at which a site rehabilitation program may be deemed completed. These rules incorporate to the maximum extent feasible, risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner.[70] For site rehabilitation to reach a status of site closure or "no further action," often appropriate institutional controls must be agreed to by the owner and applicant and implemented for the site. Institutional controls are the restrictions on use of, or access to, a site such as deed restrictions, restrictive covenants, or conservation easements to eliminate or minimize exposure to petroleum products' chemicals of concern, drycleaning solvents, or other contaminants.[71]

Average Costs and Budget Projections

The cost for cleanup at a site varies greatly depending on the extent of contamination. Typically, sites that transition quickly from assessment to no further action (closure), have lower average costs than sites that remain in the cleanup process. The below chart includes the average costs per phase of cleanup for no further action (closed) sites, and the average costs per phase for sites that are still undergoing cleanup (active) sites. This provides the range in costs associated with closed and active sites.

[69] Section 376.3078(7) and (8), F.S.
[70] Fla. Admin. Code Ch. 62-780.
[71] Section 376.301(22), F.S.

Phase of Cleanup	Assessment	Design	Remedial Action	Operation & Maintenance	Monitoring	Interim Remedial Measure	Total Average Cost
Closed Sites	$96,038	$20,516	$98,817	$84,160	$31,347	$59,954	$184,469
Active Sites	$147,211	$55,598	$257,120	$212,836	$49,390	$86,511	$578,605

Annual budget projections require the Drycleaning Solvent Cleanup Program to track average costs associated with each phase of cleanup, and to anticipate the number of sites that will transition from one phase of cleanup to the next. Based on a dataset of 322 sites, where the remedy has been selected or the site has been closed, approximately 72 percent of all sites will require active remediation to reach closure, 10 percent will require monitoring only to reach closure, and 18 percent will meet the requirements for no further action following the site assessment. The average cost for site closure will depend on the type of closure achieved (active remediation, monitoring only, or no further action), as shown below.[72]

Sites Issued a Site Rehabilitation Completion Order (Closure) following:	Average Cost
Active Remediation	$306,462
Monitoring Only	$138,308
No Further Action	$62,419

The Brownfields Redevelopment Act

The term "brownfield" was originally coined in the 1970s and referred to any previously developed property, regardless of any contamination issues. The term, as it is currently used, is defined by the U.S. Environmental Protection Agency (EPA) as, "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."[73] In 1995, the EPA created the Brownfields Program in order to manage contaminated property through site remediation and redevelopment. The program was designed to provide local communities access to federal funds allocated for redevelopment, including environmental assessments and cleanups, environmental health studies, and environmental training programs.[74]

[72] Email message dated March 12, 2017, from Wayne Kiger, Director's Office, Division of Waste Management, Florida Department of Environmental Protection (on file with the Senate Committee on Environmental Preservation and Conservation).
[73] Robert A. Jones and William F. Welsh, Michigan Brownfield Redevelopment Innovation: Two Decades of Success 2 (Sept. 2010), *available at* http://www.miseagrant.umich.edu/downloads/focus/brownfields/10-201-EMU-Final-Report.pdf (last visited March 10, 2017).
[74] The Florida Brownfields Association, Brownfields 101 2, *available at* http://c.ymcdn.com/sites/www.floridabrownfields.org/resource/resmgr/imported/Brownfields101.pdf (last visited March 10, 2017).

In 1997, the Florida Legislature enacted the Brownfields Redevelopment Act (Act).[75] The Act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of brownfield sites in order to improve public health and reduce environmental hazards.[76] The Act provides liability protection for program participants who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997.[77]

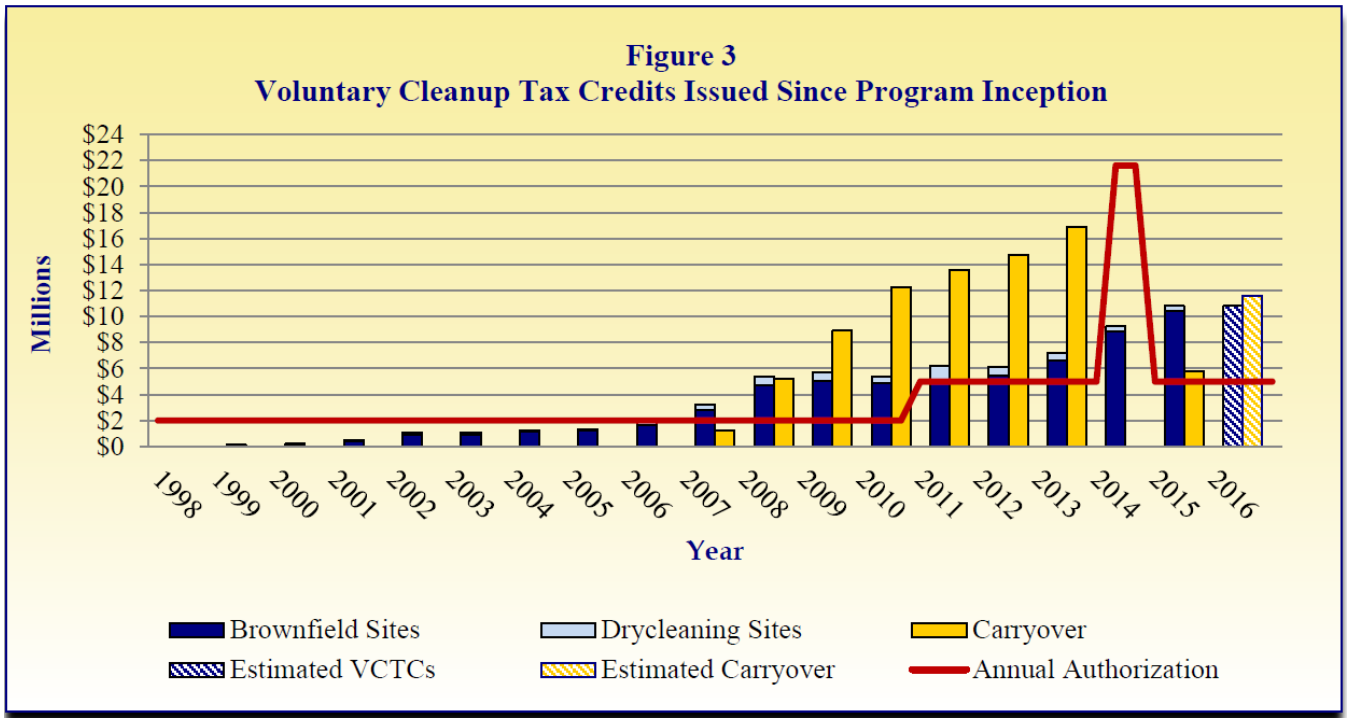
Voluntary Cleanup Tax Credits

In 1998, the Florida Legislature established the Voluntary Cleanup Tax Credit (VCTC) Program to provide an incentive for the voluntary cleanup of drycleaning solvent-contaminated sites and brownfield sites in designated brownfield areas (s. 376.30781, F.S.). At these sites, a tax credit of 50 percent is allowed for the cost of voluntary cleanup activity that is integral to site rehabilitation, with a maximum of $500,000 per site per year. Additionally, at brownfield sites in designated brownfield areas, a one-time 50 percent tax credit is allowed for solid waste removal, with a maximum of $500,000 per site. Tax credits may be applied to state corporate income tax. Effective July 1, 2011, the Legislature increased the annual tax credit authorization from $2 million to $5 million. The VCTC Program has approved $66,875,735 in tax credits since it began. However, approved applications must wait until sufficient credits exist to claim them.[78]

Effective July 1, 2015, the Legislature approved a one-time VCTC authorization of $21.6 million. This authorization was only effective through June 30, 2016. On July 1, 2016, the annual VCTC authorization returned to $5 million per year.[79] The additional authorization allowed DEP to issue certificates for all approved tax credits, eliminating the backlog.[80]

The Brownfields and VCTC Programs have been successful in promoting the cleanup and redevelopment of contaminated, underutilized properties. The one-time increase in the annual authorized VCTC funding level addressed all approved tax credits through June 30, 2015. However, as shown in the figure below, since 2007, the approved tax credits have exceeded the available authorization, and since 2012, the approved tax credits have averaged more than $8.3 million per year. If the dollar amount of future tax credit applications remains consistent with the previous five years, the backlog for un-issued tax credits will continue to grow. As of the issuance of the August 2016 Brownfields Redevelopment Program Report, DEP anticipated, with the $5 million authorization available July 1, 2016, it will issue tax credit certificates to 33 of the 99 applicants for 2015 expenditures. Sixty-four applicants will receive their tax credits in July 2017 and nine applicants will receive their tax credits in July 2018.[81]

[75] Ch. 97-173, s. 1, Laws of Fla.
[76] DEP, Florida Brownfields Redevelopment Act-1998 Annual Report 1 (1998), *available at* http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/leginfo/1998/98final.pdf (last visited March 10, 2017).
[77] Section 376.82, F.S.
[78] DEP, *Florida Brownfields Redevelopment Program Annual Report* (2016), http://dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/AnnualReport/2016/2015-16_FDEP_Annual.pdf
[79] Section 376.30781(4), F.S.
[80] *Id.*
[81] *Id.*



III. Effect of Proposed Changes:

Public Notice of Pollution Act

Section 1 creates the Public Notice of Pollution Act.

Section 2 sets forth goals and findings related to notifying the public about reportable releases. It defines a reportable pollution release as a release to the air, land, or water that is discovered by the owner or operator of an installation, is not authorized by law, and is:

- Reportable to the State Watch Office pursuant to the Department of Environmental Protection (DEP) rule, permit, order, or variance;
- Reportable to the DEP or a contracted county pursuant to rules governing storage tank systems;
- Reportable to the DEP pursuant to rules requiring notice for noncompliance from underground injection control systems where such noncompliance:
  - May endanger public health or the environment; and
  - Has the potential to contaminate potable water wells outside the property boundaries of the installation;
- A hazardous substance as defined in statute at or above quantities established in federal regulations; or
- An extremely hazardous substance as defined in federal regulations.

Section 3 requires the owner or operator of an installation at which a reportable pollution release occurs to provide a notice to the DEP within 24 hours after discovery of a reportable pollution release. The notice must include:

- The name and address of the installation where the reportable pollution release occurred.
- The name and title of the reporting person and the nature of his or her relationship to the installation.
- The identification number for any active DEP permits, variances, registrations, or orders that are relevant to the reportable pollution release.
- The name and telephone number of a contact person for further information.
- The substance released.
- The estimated quantity of the substance released and, if applicable, the estimated quantity that has since been recovered.
- The cause of the release.
- The source of the release.
- The location of the release.
- The date, time, and duration of the release.
- The medium into which the substance was released, such as, but not limited to, the outdoor air, land, groundwater, aquifer, or specified waters or wetlands.
- Whether the released substance has migrated to land or waters of the state outside the property boundaries of the installation and the location of such migration.
- To the extent available, toxicological information associated with the substance released as specified on a safety data sheet or comparable source published by the Occupational Safety and Health Administration or the Centers for Disease Control and Prevention, or their successor agencies.
- Other information to assist in the protection of the public health, safety, and welfare, at the discretion of the owner or operator.

Section 3 also requires that an additional notice be provided to the DEP if, after submitting the initial notice, the owner or operator determines that a release has migrated outside the property boundaries of the installation. Such additional notice must be given within 24 hours of discovery of the migration and must provide all of the information required in an initial notice and specify the extent of the migration.

A notification of a reportable pollution release made by a party in accordance with statutory requirements constitutes compliance on behalf of all parties subject to the notice requirement for that reportable pollution release. However, if the notification is not made in accordance with statutory requirements, the DEP may pursue enforcement against all parties subject to the notice requirement. After providing a notice of a reportable pollution release, an installation owner or operator may submit a letter to the DEP documenting additional information if an amendment to the notice is warranted or the owner or operator has determined that a reportable pollution release did not, in fact, occur.

The DEP must publish, on a website accessible to the public, all notices submitted by an owner or operator within 24 hours of receipt by the department. The DEP must also create an electronic mailing list for notices and allow the public, including local governments, health departments, news media, and other interested persons, to subscribe to and receive periodic direct announcements of any reportable pollution release notices submitted. The DEP must establish regional electronic mailing lists, such as by county or district boundaries, to allow subscribers to determine the notices they wish to receive by geographic area. The DEP must also establish an

e-mail address and an online form as options for owners and operators to provide notices of reportable pollution release.

Section 3 provides that a reportable pollution release notice provided by an owner or operator to the DEP does not constitute an admission of liability or harm. **Sections 3 and 4** provide that the owner or operator of an installation is subject to civil penalties of up to $10,000 per day for each day the owner or operator is in violation of the requirement to provide notification of a reportable pollution release. **Section 3** authorizes the DEP to adopt rules to administer these provisions.

Advanced Cleanup - Property Redevelopment

Section 5 amends s. 376.3071, F.S., to provide an exception from penalties for prompt payment to subcontractors pursuant to s. 287.0585, F.S. **Section 5** provides that the contractor may remit payment to the subcontractor within 30 working days after the contractor receives payment from the DEP. If the payments are made within this timeframe the penalties do not apply.

Section 6 amends s. 376.30713, F.S., to add legislative findings regarding the rehabilitation of a site contaminated by discharges of petroleum or petroleum products in advance of its priority ranking. The section contains findings that the inability to advance a site's priority ranking may substantially impede or prohibit property redevelopment and that it is in the public interest and of substantial economic benefit to the state to advance site rehabilitation on a limited basis in order to encourage property redevelopment.

The section creates a separate procedure and criteria for the advancement ahead of its priority ranking of an individual contamination site slated for property redevelopment. The submittal of advanced cleanup applications for such sites are not limited to the two annual application periods from May 1 through June 30 and from November 1 through December 31, as are all other advanced cleanup applications, but are instead accepted on a first-come, first-served basis. Applicants for the advanced cleanup of individual contamination sites slated for redevelopment are also not subject to the 25 percent cost share copayment commitment required of other advanced cleanup applicants provided they demonstrate, as deemed acceptable by the Department of Environmental Protection (DEP), that the following have been included in their applications for cleanup:

- A nonrefundable review fee of $250 for DEP's administrative cost;
- A limited contamination assessment report which is sufficient to support the course of action;
- A proposed course of action for site cleanup;
- A DEP approved agreement with the property owners for site cleanup if the applicant is not the owner;
- Certification to the DEP that the applicant has the authority to enter into an advanced site cleanup contract with the DEP;
- Documentation from the local government having jurisdiction that states that the local government is in agreement with or approves the redevelopment;
- A demonstrated reasonable assurance that the applicant has sufficient financial resources to implement and complete the redevelopment project.

Section 6 provides that site eligibility is not an entitlement to advanced cleanup funding or continued restoration funding.

Section 6 also increases the dollar amount of the contracts for advance cleanup work into which the DEP is authorized to enter from $25 million to a total of $30 million in each fiscal year. The DEP is authorized to designate up to $5 million of those funds for the advance cleanup of individual contaminated sites that meet the criteria in the bill for redevelopment. A single facility or applicant for advance cleanup of an individual contaminated site slated for redevelopment may not be approved for more than $1 million of cleanup activity per fiscal year.

Section 2 also provides the DEP with the right to terminate or amend the voluntary cost-share agreement with property owners or responsible parties if, the property owners or responsible parties are eligible to bundle multiple sites and fail to do so within three subsequent open application periods or 18 months, whichever is shorter.

Section 6 provides that the property owner or responsible party must agree to conduct limited site assessments within 12 months after execution of the voluntary cost-share agreement.

Advanced Site Assessment - Drycleaning

Section 7 amends s. 376.3078, F.S., to provide a finding that it is in the public interest and of substantial environmental and economic benefit to the state to conduct site assessments on a limited basis at sites contaminated with drycleaning solvents in advance of the priority ranking of contaminated sites.

The section provides that a property owner who is eligible for site rehabilitation under the drycleaning solvent cleanup program may request, and the DEP may authorize, an advanced site assessment if the following criteria are met:

- Information from the site assessment would be sufficient for the DEP to better evaluate the actual risk of the contamination, reducing the risk to public health and the environment;
- The property owner agrees to:
  - Implement the appropriate institutional controls at the time the owner requests the advanced site assessment; and
  - Upon completion of the cleanup, implement and maintain the required institutional controls, or a combination of institutional and engineering controls, when the site meets site rehabilitation criteria for closure with controls in accordance with the DEP rules for site rehabilitation;
- Current conditions at the site allow the site assessment to be conducted in a manner that will result in cost savings to the Water Quality Assurance Trust Fund;
- The annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program is sufficient to pay for the site assessment; and
- The property owner provides access to the site and has paid the appropriate deductible amount depending on when contamination was reported to the DEP as part of a completed application for the Drycleaning Contamination Cleanup Program to rehabilitate the drycleaning facility.

The section also provides that a site may be assessed out of priority ranking order at the DEP's discretion when the site assessment will provide a cost savings to the program.

The section requires an advanced site assessment under the drycleaning solvent cleanup program to incorporate risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner, in accordance with the DEP rules for site rehabilitation. The advanced site assessment must also be sufficient to estimate the cost of cleanup, the proposed course of action for site cleanup, and that the site is appropriate for one of the following:

- Remedial action at the site to mitigate risks that, in the judgment of the DEP, are a threat to human health or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment;
- Additional groundwater monitoring at the site to support natural attenuation monitoring or long-term groundwater monitoring; or
- A recommendation of "no further action," with or without institutional controls or institutional and engineering controls, if the site meets the "no further action" criteria in accordance with the DEP rules for site rehabilitation.

If the site is not appropriate for one of these actions, it is not eligible for advanced site assessment. The DEP must notify the property owner in writing of this determination and return the site to the priority ranking order based on its priority score.

The section requires that advanced site assessment program tasks be assigned by the drycleaning solvent cleanup program. Task assignment must be based on:

- The potential for the development of new site assessment information to allow the DEP to better evaluate the actual risk of the contamination;
- Compatibility with appropriate institutional controls or a combination of institutional and engineering controls;
- The potential for cost savings to the Water Quality Assurance Trust Fund;
- The availability of funds from the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent program;
- The DEP's determination of contractor logistics;
- Geographical considerations; and
- Other criteria that the DEP determines are necessary to achieve the most cost-effective approach.

This section limits available funding for advanced site assessments to 10 percent of the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program. The total funds that may be committed to any one site are capped at $70,000. The DEP must prioritize requests for advanced site assessment at sites under the drycleaning solvent cleanup program based on the date of receipt and the environmental and economic value to the state until the available funding for advanced site assessments has been obligated.

Voluntary Cleanup Tax Credit (VCTC) Funding

Sections 8 and 9 amend ss. 220.1845 and 376.30781, F.S., respectively, to increase the annual cap on voluntary cleanup tax credits from $5 million to $10 million.[82]

[82] Sections 220.1845 and 376.30781, F.S.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable.

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:

Owners and operators of installations that use, produce, or contain substances listed by the Department of Environmental Protection (DEP) will likely incur some costs for gathering and reporting information regarding reportable pollution releases within 24 hours of discovery when such an event occurs.

The property redevelopment sections of this bill should have a positive fiscal impact on the private sector. Redevelopment of property will be encouraged by an additional $5 million available annually for petroleum contamination site rehabilitation for sites proposed for redevelopment. Also, an additional $5 million in funds will be available for voluntary cleanup through corporate income tax credits for the rehabilitation of dry-cleaning solvent contaminated sites or brownfield sites.

C. Government Sector Impact:

Installations owned or operated by governmental entities, including local governments, will likely incur some costs for gathering and reporting information regarding reportable pollution releases within 24 hours of discovery when such an event occurs.

The DEP also will likely incur some costs in promulgating rules to administer the provisions of the bill and in developing the website and electronic mailing lists required by the bill. The DEP currently has notifications and electronic mailing for other programs within the department and should have the ability to absorb the costs within existing resources.

The bill will have a $5 million recurring impact to the Inland Protection Trust Fund by increasing the total amount of contracts the DEP is authorized to approve for advanced cleanup work to $30 million annually. The bill will have a $5 million recurring impact to the General Revenue Fund by increasing the annual cap on the voluntary cleanup tax credits to $10 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 403.121, 376.30713, 376.3078, and 376.86.

This bill creates the following sections of the Florida Statutes: 403.076, 403.077, and 403.078.

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 25, 2017:
The committee substitute:

- Amends s. 376.3071, F.S., to provide an exception from penalties for prompt payment to subcontractors pursuant to s. 287.0585, F.S. Provides that the contractor may remit payment to the subcontractor within 30 working days after the contractor receives payment from the Department of Environmental Protection (DEP). If the payments are made within this timeframe the penalties do not apply.
- Clarifies requirements for eligibility of advanced site cleanup applicants.
- Provides that site eligibility is not an entitlement to advanced cleanup funding or continued restoration funding.
- Creates the Public Notice of Pollution Act.
- Defines a reportable pollution release as a release to the air, land, or water that is discovered by the owner or operator of an installation, is not authorized by law, and is:
  - Reportable to the State Watch Office;
  - Reportable to the DEP or a contracted county pursuant to rules governing storage tank systems;
  - Reportable to the DEP pursuant to rules governing underground injection control systems;
  - A hazardous substance; or
  - An extremely hazardous substance.

- Requires the owner or operator of any installation where a reportable pollution release occurs to provide a notice of the release to the DEP. The notice must be submitted to the DEP within 24 hours after discovery of the reportable pollution release and must contain detailed information about the installation, the substance, and the circumstances surrounding the release.
- Requires the owner or operator to provide additional notice to the DEP if a release migrates outside the property boundaries of the installation.
- Requires the DEP to publish each notice to the Internet within 24 hours after the DEP receives it.
- Requires the DEP to create a system for electronic mailing that allows interested parties to subscribe to and receive direct announcements of notices received by the DEP.
- Requires the DEP to establish an email address and an online form so that installation owners and operators are able to submit a notice of a reportable pollution release electronically.
- Provides for $10,000 per day in civil penalties for violations of notice requirements and authorizes the DEP to adopt rules to administer these provisions.

CS by Environmental Preservation and Conservation on March 14, 2017:

- Removes unnecessary language that was inserted into the "emergency action" exception to the drycleaning rehabilitation scoring criteria. New subsection (14) in s. 376.308, F.S., already makes it clear that advance assessments are not subject to the scoring criteria.
- Increases the annual cap for the VCTC. The CS replaces the modification in the bill to the brownfield areas loan guaranty program, which had been intended to have the same practical effect.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation; and Senator Grimsley

592-02440-17 20171018c1

A bill to be entitled

An act relating to contaminated site cleanup; amending s. 376.30713, F.S.; revising legislative findings; providing an exception to a requirement that an applicant for advanced cleanup demonstrate an ability to pay cost share; requiring that the Department of Environmental Protection determine whether specified requirements are acceptable under certain circumstances; providing that the application for the cleanup of individual redevelopment sites is not subject to certain application period limitations and cost-share provisions; specifying the application requirements for such sites; conforming provisions to changes made by the act; increasing the amount per year the department may use for advanced cleanup work; specifying expenditure limitations; amending s. 376.3078, F.S.; providing a statement of public interest; authorizing site assessments in advance of site priority ranking under certain circumstances; specifying criteria for sites to be eligible for such assessments; specifying what must be demonstrated through such assessments; specifying criteria for the assignment of assessment tasks; specifying funding limitations; specifying the prioritization of requests; amending s. 220.1845, F.S.; increasing the total amount of an authorization for tax credits; amending s. 376.30781, F.S.; increasing the total amount of tax credits the department is responsible for allocating; providing an effective date.

592-02440-17 20171018c1

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

Section 1. Paragraphs (a) and (c) of subsection (1) and subsections (2) and (4) of section 376.30713, Florida Statutes, are amended to read:

376.30713 Advanced cleanup.—

(1) In addition to the legislative findings provided in s. 376.3071, the Legislature finds and declares:

(a) That the inability to conduct site rehabilitation in advance of a site's priority ranking pursuant to s. 376.3071(5)(a) may substantially impede or prohibit property redevelopment, property transactions, or the proper completion of public works projects.

(c) It is in the public interest and of substantial economic benefit to the state to provide an opportunity for site rehabilitation to be conducted on a limited basis at contaminated sites, in advance of the site's priority ranking, to encourage redevelopment and facilitate property transactions or public works projects.

(2) The department may approve an application for advanced cleanup at eligible sites, notwithstanding the site's priority ranking established pursuant to s. 376.3071(5)(a), pursuant to this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies as an applicant under this section.

(a) Advanced cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30

shall be for the fiscal year beginning July 1. An application must consist of:

1. A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable under this section along with proof of the ability to pay the cost share or a demonstration that the applicant is in compliance with sub-sub-subparagraphs c.(I) and (II). The department shall determine whether the cost savings or compliance demonstration is acceptable. Such determination is not subject to chapter 120.

a. Applications for the aggregate cleanup of five or more sites may be submitted in one of two formats to meet the cost-share requirement:

(I) For an aggregate application proposing that the department enter into a performance-based contract, the applicant may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the requirement.

(II) For an aggregate application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application the percentage of cost savings in the aggregate that is being provided to the department for cleanup of the sites under the application compared to the cost of cleanup of those same sites using the current rates provided to the department by the proposed agency term contractor.

b. Applications for the cleanup of individual sites may be submitted in one of two formats to meet the cost-share requirement:

(I) For an individual application proposing that the department enter into a performance-based contract, the

applicant may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the requirement.

(II) For an individual application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application a 25-percent cost savings to the department for cleanup of the site under the application compared to the cost of cleanup of the same site using the current rates provided to the department by the proposed agency term contractor.

c. Applications for the cleanup of individual redevelopment sites are not subject to the application period limitations specified in paragraph (a) or to the cost-share provisions in paragraph (1)(d) and are accepted on a first-come, first-served basis. Applications for the cleanup of individual redevelopment sites must include:

(I) Certification that the applicant has consulted with the local government having jurisdiction over the area about the proposed redevelopment of the site, that the local government is in agreement with or approves the proposed redevelopment, and that the proposed redevelopment complies with applicable laws and requirements for such redevelopment. The certification shall be accomplished by referencing or providing a legally recorded or officially approved land use or site plan, a development order or approval, a building permit, or a similar official document issued by the local government which reflects the local government's approval of the proposed redevelopment of the site or by providing a letter from the local government which describes the proposed redevelopment of the site and expresses

the local government's agreement with or approval of the proposed redevelopment.

(II) A demonstrated reasonable assurance that the applicant has sufficient financial resources to implement and complete the redevelopment project.

2. A nonrefundable review fee of $250 to cover the administrative costs associated with the department's review of the application.

3. A limited contamination assessment report.

4. A proposed course of action.

5. A department site access agreement, or similar agreements approved by the department that do not violate state law, entered into with the property owner or owners, as applicable, and evidence of authorization from such owner or owners for petroleum site rehabilitation program tasks consistent with the proposed course of action where the applicant is not the property owner for any of the sites contained in the application.

The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund. Site eligibility under this subsection or any other provision of this section is not an entitlement to advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The

certification must be submitted with the application.

(b) The department shall rank the applications specified in sub-subparagraphs (a)1.a. and b. based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and that exceed the funds available to commit to all such proposals during the advanced cleanup application period, the department shall proceed to rerank those applicants. Those applicants submitting identical cost-sharing proposals that exceed funding availability must be so notified by the department and offered the opportunity to raise their individual cost-share commitments, in a period specified in the notice. At the close of the period, the department shall proceed to rerank the applications pursuant to this paragraph.

(4) The department may enter into contracts for a total of up to $30 ~~$25~~ million of advanced cleanup work in each fiscal year. Up to $5 million of these funds may be designated for cleanup of individual redevelopment sites as referenced in sub-subparagraph (2)(a)1.c.

(a) ~~However,~~ A facility or an applicant who bundles multiple sites as specified in subparagraph (2)(a)1. may not be approved for more than $5 million of cleanup activity in each fiscal year.

(b) A facility or an applicant applying for cleanup of individual redevelopment sites as referenced in sub-subparagraph (2)(a)1.c. may not be approved for more than $1 million of cleanup activity in each fiscal year.

(c) A property owner or responsible party may enter into a voluntary cost-share agreement in which the property owner or responsible party commits to bundle multiple sites and lists the facilities that will be included in those future bundles. The facilities listed are not subject to agency term contractor assignment pursuant to department rule. The department reserves the right to terminate or amend the voluntary cost-share agreement for any identified site under the voluntary cost-share agreement if the property owner or responsible party fails to submit an application to bundle any site, not already covered by an advance cleanup contract, under such voluntary cost-share agreement within a subsequent open application period during which it is eligible to participate. For the purposes of this section, the term "facility" includes, but is not limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

Section 2. Subsection (14) is added to section 376.3078, Florida Statutes, to read:

376.3078 Drycleaning facility restoration; funds; uses; liability; recovery of expenditures.—

(14) ADVANCED SITE ASSESSMENT.—It is in the public interest, and of substantial environmental and economic benefit to the state, to provide an opportunity to conduct site assessment on a limited basis at contaminated sites in advance of the ranking of the sites on the priority list as specified in subsection (8).

(a) A real property owner who is eligible for site rehabilitation at a facility that has been determined eligible

for the drycleaning solvent cleanup program under this section may request an advanced site assessment, and the department may authorize the performance of a site assessment in advance of the ranking of the site on the priority list as specified in subsection (8), if the following criteria are met:

1. The site assessment information would provide new information that would be sufficient for the department to better evaluate the actual risk of the contamination, thereby reducing the risk to public health and the environment;

2. The property owner agrees:

a. To implement the appropriate institutional controls allowed by department rules adopted pursuant to subsection (4) at the time the property owner requests the advanced site assessment; and

b. To implement and maintain, upon completion of the cleanup, the required institutional controls, or a combination of institutional and engineering controls, when the site meets the site rehabilitation criteria for closure with controls in accordance with department rules adopted pursuant to subsection (4);

3. Current conditions at the site allow the site assessment to be conducted in a manner that will result in cost savings to the Water Quality Assurance Trust Fund;

4. There is sufficient money in the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program to pay for the site assessment; and

5. In accordance with subsection (3), access to the site is provided and the deductible is paid.

(b) A site may be assessed out of priority ranking order

when, at the department's discretion, the site assessment will provide a cost savings to the program.

(c) An advanced site assessment must incorporate risk-based corrective action principles to achieve protection of human health and safety and the environment in a cost-effective manner, in accordance with subsection (4). The site assessment must also be sufficient to estimate the cost and determine the proposed course of action toward site cleanup. Advanced site assessment activities performed under this subsection shall be designed to affirmatively demonstrate that the site meets one of the following findings based on the following specified criteria:

1. Recommend remedial action to mitigate risks that, in the judgment of the department, are a threat to human health or where failure to prevent migration of drycleaning solvents would cause irreversible damage to the environment;

2. Recommend additional groundwater monitoring to support natural attenuation monitoring or long-term groundwater monitoring; or

3. Recommend "no further action," with or without institutional controls or institutional and engineering controls, for those sites that meet the "no further action" criteria department rules adopted pursuant to subsection (4).

If the site does not meet one of the findings specified in subparagraphs 1.-3., the department shall notify the property owner in writing of this decision, and the site shall be returned to its priority ranking order in accordance with its score.

(d) Advanced site assessment program tasks shall be assigned by the drycleaning solvent cleanup program. In addition to the provisions in paragraph (a), the assignment of site assessment tasks shall be based on the department's determination of contractor logistics, geographical considerations, and other criteria that the department determines are necessary to achieve the most cost-effective approach.

(e) Available funding for advanced site assessments may not exceed 10 percent of the annual Water Quality Assurance Trust Fund appropriation for the drycleaning solvent cleanup program.

(f) The total funds committed to any one site may not exceed $70,000.

(g) The department shall prioritize the requests for advanced site assessment, based on the date of receipt and the environmental and economic value to the state, until 10 percent of the annual Water Quality Assurance Trust Fund appropriation, as provided in paragraph (e), has been obligated.

Section 3. Paragraph (f) of subsection (2) of section 220.1845, Florida Statutes, is amended to read:

220.1845 Contaminated site rehabilitation tax credit.—

(2) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

(f) The total amount of the tax credits which may be granted under this section is $21.6 million in the 2015-2016 fiscal year, ~~and~~ $5 million in the 2016-2017 fiscal year, and $10 million annually thereafter.

Section 4. Subsection 4 of section 376.30781, Florida Statutes, is amended to read:

376.30781 Tax credits for rehabilitation of drycleaning-

solvent-contaminated sites and brownfield sites in designated brownfield areas; application process; rulemaking authority; revocation authority.—

(4) The Department of Environmental Protection is responsible for allocating the tax credits provided for in s. 220.1845, which may not exceed a total of $21.6 million in tax credits in the 2015-2016 fiscal year, ~~and~~ $5 million in tax credits in the 2016-2017 fiscal year, and $10 million in tax credits annually thereafter.

Section 5. 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 18, 2017

I respectfully request that **Senate Bill #1018**, relating to Contaminated Site Cleanup, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Denise Grimsley
Florida Senate, District 26

cc: Mike Hansen, Staff Director
Alicia Weiss, Committee Administrative Assistant

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/SB 714 (897830)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senator Garcia
SUBJECT:	Comprehensive Transitional Education Programs
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Favorable**
2.	Loe	Williams	AHS	**Recommend: Fav/CS**
3.	Loe	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 714 authorizes the Agency for Persons with Disabilities (APD) to petition a court for the appointment of a receiver for a comprehensive transitional education program under certain circumstances.

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

The bill has an effective date of July 1, 2017.

II. Present Situation:

A comprehensive transitional education program (CTEP) serves individuals with developmental disabilities who also have moderate to severe maladaptive behaviors. There are two CTEPs licensed in Florida.[1] CTEP licenses are issued for a 12-month period. No fees are charged for the initial application or subsequent licensure renewal.

In s. 393.062, F.S., the legislature has expressed its intent that community-based programs and services for individuals with developmental disabilities are preferred to programs operated

[1] The two CTEP licenses are held by the same company that operates a CTEP in Mt. Dora, Florida. Section 393.18(4), F.S., limits the total number of residents served in a CTEP to 120 per license. The CTEP in Mt. Dora, Florida, serves more than 120 residents and is thus required to hold two separate licenses.

directly by the state.[2] Pursuant to the recently issued federal Medicaid waiver guidelines, there has been a shift to provide person-centered care and for care to be provided in home and community-based settings, moving away from institutionalized settings as currently utilized.[3] The new Medicaid waiver guidelines become effective March 2019.[4]

Receivership

A receiver is "[an] indifferent person between the parties appointed by a court to collect and receive the rents, issues and profits of land, or the produce or person estate, or other things which it does not seem reasonable to the court that either party should do; or where a party is incompetent to do so.[5] Pursuant to s. 393.0678, F.S., the APD may petition a court for the appointment of a receiver for a residential habilitation center or a group home facility owned and operated by a corporation or partnership when certain conditions exist:

- A person is operating a facility without a license and refuses to make an application for a license;
- The licensee is closing the facility or has informed the department that it intends to close the facility, and adequate arrangements have not been made for relocation of the residents within seven days, exclusive of weekends and holidays, of the closing of the facility;
- The agency determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm will result; or
- The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities.[6]

III. Effect of Proposed Changes:

Section 1 amends s. 393.0678(1), F.S., to add Comprehensive Transitional Education Programs to the list of entities for which the APD can initiate receivership proceedings.

Section 2 provides that the bill becomes effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[2] Agency for Persons with Disabilities legislative analysis dated February 23, 2017.
[3] *Id*.
[4] Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers; Final Rule 79 Fed. Reg. 2948 (Jan. 16, 2014). The effective date of the final regulations was March 14, 2014, and the regulations allow each state up to five years to bring its home and community-based programs into compliance with the home and community-based settings requirements.
[5] *Black's Law Dictionary* (Online Dictionary 2nd Ed.)
[6] Section 393.0678(1)(a)-(d), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The transition from the current comprehensive transitional education program in Lake Nona, Florida, to smaller residential group homes will require all clients, including those with private insurance, to move into a new residential group home. The location and expense of the smaller residential group homes are not known at this time.

C. Government Sector Impact:

The bill has no direct impact on state revenues or expenditures. However, in the event a receiver is appointed, the APD will be required to provide assessments and transition plans to current residents residing at the comprehensive transitional education program in Mt. Dora, Florida. The APD will also be required to provide the licensing and oversight of the smaller group homes. These requirements will increase workload for agency staff, and can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 393.0678 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 by Appropriations Subcommittee on Health and Human Services on April 18, 2017:
The committee substitute removes the sunset provision for comprehensive transitional education program licensure application and renewal.

B. Amendments:

None.

897830

576-04077A-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 comprehensive transitional education programs; amending s. 393.0678, F.S.; authorizing the Agency for Persons with Disabilities to petition a court for the appointment of a receiver for a comprehensive transitional education program under certain circumstances; providing an effective date.

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

Section 1. Subsection (1) of section 393.0678, Florida Statutes, is amended to read:

393.0678 Receivership proceedings.—

(1) The agency may petition a court of competent jurisdiction for the appointment of a receiver for a comprehensive transitional education program, a residential habilitation center, or a group home facility owned and operated by a corporation or partnership when any of the following conditions exist:

(a) Any person is operating a facility or program without a license and refuses to make application for a license as required by s. 393.067.

(b) The licensee is closing the facility or has informed the department that it intends to close the facility; and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of

897830

576-04077A-17

the closing of the facility.

(c) The agency determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm would result therefrom. Whenever possible, the agency shall facilitate the continued operation of the program.

(d) The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities. Evidence such as the issuance of bad checks or the accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities constitutes prima facie evidence that the ownership of the facility lacks the financial ability to operate the home in accordance with the requirements of this chapter and all rules promulgated thereunder.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 714
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senator Garcia
SUBJECT:	Comprehensive Transitional Education Programs
DATE:	April 26, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Favorable**
2.	Loe	Williams	AHS	**Recommend: Fav/CS**
3.	Loe	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 714 authorizes the Agency for Persons with Disabilities (APD) to petition a court for the appointment of a receiver for a comprehensive transitional education program under certain circumstances.

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

The bill has an effective date of July 1, 2017.

II. Present Situation:

A comprehensive transitional education program (CTEP) serves individuals with developmental disabilities who also have moderate to severe maladaptive behaviors. There are two CTEPs licensed in Florida.[1] CTEP licenses are issued for a 12-month period. No fees are charged for the initial application or subsequent licensure renewal.

In s. 393.062, F.S., the legislature has expressed its intent that community-based programs and services for individuals with developmental disabilities are preferred to programs operated

[1] The two CTEP licenses are held by the same company that operates a CTEP in Mt. Dora, Florida. Section 393.18(4), F.S., limits the total number of residents served in a CTEP to 120 per license. The CTEP in Mt. Dora, Florida, serves more than 120 residents and is thus required to hold two separate licenses.

directly by the state.[2] Pursuant to the recently issued federal Medicaid waiver guidelines, there has been a shift to provide person-centered care and for care to be provided in home and community-based settings, moving away from institutionalized settings as currently utilized.[3] The new Medicaid waiver guidelines become effective March 2019.[4]

Receivership

A receiver is "[an] indifferent person between the parties appointed by a court to collect and receive the rents, issues and profits of land, or the produce or person estate, or other things which it does not seem reasonable to the court that either party should do; or where a party is incompetent to do so.[5] Pursuant to s. 393.0678, F.S., the APD may petition a court for the appointment of a receiver for a residential habilitation center or a group home facility owned and operated by a corporation or partnership when certain conditions exist:

- A person is operating a facility without a license and refuses to make an application for a license;
- The licensee is closing the facility or has informed the department that it intends to close the facility, and adequate arrangements have not been made for relocation of the residents within seven days, exclusive of weekends and holidays, of the closing of the facility;
- The agency determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm will result; or
- The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities.[6]

III. Effect of Proposed Changes:

Section 1 amends s. 393.0678(1), F.S., to add Comprehensive Transitional Education Programs to the list of entities for which the APD can initiate receivership proceedings.

Section 2 provides that the bill becomes effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[2] Agency for Persons with Disabilities legislative analysis dated February 23, 2017.
[3] *Id*.
[4] Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice and Home and Community-Based Services (HCBS) Waivers; Final Rule 79 Fed. Reg. 2948 (Jan. 16, 2014). The effective date of the final regulations was March 14, 2014, and the regulations allow each state up to five years to bring its home and community-based programs into compliance with the home and community-based settings requirements.
[5] *Black's Law Dictionary* (Online Dictionary 2nd Ed.)
[6] Section 393.0678(1)(a)-(d), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The transition from the current comprehensive transitional education program in Lake Nona, Florida, to smaller residential group homes will require all clients, including those with private insurance, to move into a new residential group home. The location and expense of the smaller residential group homes are not known at this time.

C. Government Sector Impact:

The bill has no direct impact on state revenues or expenditures. However, in the event a receiver is appointed, the APD will be required to provide assessments and transition plans to current residents residing at the comprehensive transitional education program in Mt. Dora, Florida. The APD will also be required to provide the licensing and oversight of the smaller group homes. These requirements will increase workload for agency staff, and can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 393.0678 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on April 25, 2017:
The committee substitute removes the sunset provision for comprehensive transitional education program licensure application and renewal.

B. Amendments:

None.

By Senator Garcia

36-01178-17 2017714__

A bill to be entitled

An act relating to comprehensive transitional education programs; amending s. 393.0678, F.S.; authorizing the Agency for Persons with Disabilities to petition a court for the appointment of a receiver for a comprehensive transitional education program under certain circumstances; amending s. 393.18, F.S.; providing that no new comprehensive transitional education programs may be licensed after a specified date; providing that no licenses may be renewed for comprehensive transitional education programs after a certain specified date; providing an effective date.

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

Section 1. Subsection (1) of section 393.0678, Florida Statutes, is amended to read:

393.0678 Receivership proceedings.—

(1) The agency may petition a court of competent jurisdiction for the appointment of a receiver for a comprehensive transitional education program, a residential habilitation center, or a group home facility owned and operated by a corporation or partnership when any of the following conditions exist:

(a) Any person is operating a facility or program without a license and refuses to make application for a license as required by s. 393.067.

(b) The licensee is closing the facility or has informed the department that it intends to close the facility; and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the facility.

36-01178-17 2017714__

(c) The agency determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm would result therefrom. Whenever possible, the agency shall facilitate the continued operation of the program.

(d) The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities. Evidence such as the issuance of bad checks or the accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities constitutes prima facie evidence that the ownership of the facility lacks the financial ability to operate the home in accordance with the requirements of this chapter and all rules promulgated thereunder.

Section 2. Subsection (7) is added to section 393.18, Florida Statutes, to read:

393.18 Comprehensive transitional education program.—A comprehensive transitional education program serves individuals who have developmental disabilities, severe maladaptive behaviors, severe maladaptive behaviors and co-occurring complex medical conditions, or a dual diagnosis of developmental disability and mental illness. Services provided by the program must be temporary in nature and delivered in a manner designed to achieve the primary goal of incorporating the principles of self-determination and person-centered planning to transition individuals to the most appropriate, least restrictive community living option of their choice which is not operated as a comprehensive transitional education program. The supervisor of the clinical director of the program licensee must hold a

doctorate degree with a primary focus in behavior analysis from an accredited university, be a certified behavior analyst pursuant to s. 393.17, and have at least 1 year of experience in providing behavior analysis services for individuals in developmental disabilities. The staff must include behavior analysts and teachers, as appropriate, who must be available to provide services in each component center or unit of the program. A behavior analyst must be certified pursuant to s. 393.17.

(7) After July 1, 2017, a license may not be granted under this section to a new comprehensive transitional education program. After December 31, 2019, a license may not be renewed for an existing comprehensive transitional education program.

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

Please reply to:

☐ **District Office:**

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

The Florida Senate

State Senator René García
36th District

April 19th, 2017

The Honorable Jack Latvala
Chairman, Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latvala,

Please have this letter serve as my formal request to have **SB 714: Comprehensive Transitional Education Programs** be heard during the next scheduled Appropriations Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

State Senator René García
District 36

CC: Mike Hansen
Alicia Weiss

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

714
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic CTEP

Name Robert Brown

Job Title Legislative Affairs Director

Address 4030 Esplanade Way
Street
Tallahassee FL 32399
City *State* *Zip*

Phone 850 414 5853

Email robert.brown@apdcares.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Agency for Persons with Disabilities (APD)

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 922 (598160)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Garcia
SUBJECT:	Insurance Adjusters
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Sanders/Billmeier	Betta	AGG	**Recommend: Fav/CS**
3.	Sanders	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 922 amends various statutes relating to insurance adjusters. The bill eliminates licensure for public adjuster apprentices and requires a public adjuster apprentice to be licensed as an all-lines adjuster and appointed as a public adjuster apprentice.

Current law authorizes, but does not require, licensure of adjusting firms, unless the person operating the firm fails to designate a primary adjuster within specified timeframes. The bill requires licensure for adjusting firms and provides application requirements and background checks for firm owners and officers.

In addition, the bill:

- Eliminates the temporary license, which is not currently used;
- Revises the requirements for public adjusters to expressly prohibit unlicensed public adjusting that is done directly or indirectly;
- Deletes a provision of law held unconstitutional by the Florida Supreme Court;
- Excludes deductibles from the calculation of an adjuster's fee; and
- Reduces the time a public adjuster apprentice must be supervised before becoming eligible for licensure as a public adjuster.

In addition, the bill makes numerous changes to part VI of ch. 626, F.S., and other statutes applicable to adjusters to improve the efficiency of licensure and enforcement.

The Department of Financial Services (DFS) anticipates $2,500 per year in recurring revenue from penalties imposed for failing to obtain a license as an adjusting firm. [1]

The DFS will need to make updates to its licensing system to allow for adjusting firm licenses; however, these changes will be absorbed within existing resources.[2]

The Office of Insurance Regulation does not anticipate any impact to state funds or expenditures.[3]

II. Present Situation:

Insurance Adjusters

Part VI of ch. 626, F.S., regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters. A "public adjuster" is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.[4] An "independent adjuster" is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract. A "company employee adjuster" is any person employed in-house by an insurer who ascertains and determines the amount of an insurance claim, loss, or damage, or settles an insurance claim under an insurance contract.

Public adjusters are licensed by the Department of Financial Services (DFS) and are required to meet pre-licensing requirements, which include submitting an application, paying required fees, complying with requirements as to knowledge, experience, or instruction, and submitting fingerprints.

A policyholder who has sustained an insured loss may hire a public adjuster. The public adjuster will inspect the loss site, analyze the damages, assemble claim support data, review the insured's coverage, determine current replacement costs, and confer with the insurer's representatives to adjust the claim. Public adjuster fees are capped at ten to 20 percent of the insurance claim payments.[5]

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[1] Department of Financial Services, *Senate Bill 922 Fiscal Analysis* (April 3, 2017) (on file with the Senate Appropriations Subcommittee on General Government).
[2] *Id* at p. 5.
[3] Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).
[4] Section 626.854(1), F.S.
[5] Section 626.854 (11), F.S.

Adjusting Firms

Under current law, adjusting firms are not required to be licensed by the DFS. If a firm chooses to obtain a license, it lasts for three years and costs $60.[6] An application for licensure must include:

- The name and address of each majority owner, partner, officer, and director of the adjusting firm;
- The name of the adjusting firm and its principal business address; and
- The location of each adjusting firm office and the name under which each office conducts or will conduct business.[7]

The law provides grounds for mandatory and discretionary denial, suspension, or revocation of an adjusting firm license.[8] Currently there are no licensed adjusting firms within the State of Florida; however, the DFS reports there are 3,736 unlicensed adjusting firms in the DFS system.[9] Unlicensed firms, led by unknown individuals, are controlling primary adjusters and appointed adjusters. Under current law, it would be acceptable for a person who steals money from their insurance clients, has their license revoked, and is convicted of a felony crime for the act, to start an adjusting firm.[10] In comparison, there are 39,082 licensed insurance agencies with over 24,437 additional branch locations. The DFS is aware of who owns and operates each of these entities. Convicted criminals and individuals whose license have been revoked are prohibited from owning or controlling these organizations.[11] These licensees do not currently pay a fee for licensure by the DFS and the license does not have to be renewed. These licensees are obligated to provide electronic updates when they change addresses or leadership.[12]

Solicitation by Public Adjusters

In 2008, the Legislature prohibited public adjusters from directly or indirectly through any other person or entity initiating contact or engaging in face-to-face or telephonic solicitation with any insured until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy.[13] In 2012, the Florida Supreme Court held the law violated a public adjuster's right to free speech because the statute regulated commercial speech and was more extensive than necessary to serve the state's interest.[14]

Public Adjuster Apprentices

A "public adjuster apprentice" is any person who:

- Is not a licensed public adjuster;

[6] Section 624.501(20), F.S.
[7] Section 626.8696, F.S.
[8] Section 624.501, F.S.
[9] Email from Elizabeth Boyd, Legislative Affairs Director, Department of Financial Services (April 12, 2017) (on file with Senate Appropriations Subcommittee on General Government).
[10] Email from Elizabeth Boyd, Legislative Affairs Director, Department of Financial Services (April 12, 2017) (on file with the Senate Subcommittee on General Government).
[11] *Id* at p. 2.
[12] *Id* at p. 2
[13] Chapter 2008-220, L.O.F.
[14] *Atwater v. Kortum*, 95 So.2d 85 (Fla. 2012).

- Is employed by or has a contract with a licensed and appointed public adjuster or a public adjusting firm to assist a public adjuster in conducting business under the license; and
- Satisfies the licensing and character requirements of s. 626.8651, F.S.

To become licensed, a public adjuster apprentice applicant must be 18 years of age; a U.S. Citizen; trustworthy; pay all fees applicable to adjuster licenses; and pass an examination. In addition, an applicant must possess specified certification related to claims adjustment and present to the DFS a bond in the amount of $50,000. A public adjuster apprentice must complete a minimum of 100 hours per month for 12 months under the supervision of a licensed all-lines public adjuster before becoming eligible for licensure as a public adjuster.[15] A public adjuster apprentice license is effective for 18 months unless the license expires due to lack of maintaining an appointment, is surrendered by the licensee, is terminated, suspended or revoked by the DFS, or is cancelled by the DFS upon issuance of a public adjuster license.[16]

Current law allows an appointing public adjusting firm to maintain up to 12 public adjuster apprentices concurrently.[17] A supervising public adjuster may only be responsible for three public adjuster apprentices simultaneously. An apprentice has the same authority as a public adjuster except that an apprentice may not execute contracts for services of a public adjuster except under the direct supervision of a public adjuster.[18]

III. Effect of Proposed Changes:

Adjusting Firms (Sections 1, 3, 4, 14 and 15)

Section 1 amends s. 624.501, F.S. to remove the $60 fee associated with an original or renewal license for an adjusting firm.

Section 3 amends s. 626.022, F.S., to include adjusting firms as part of the scope of the act.

Section 4 amends s. 626.112, F.S., to require an entity acting as an adjusting firm to have a license from the Department of Financial Services (DFS) for each place of business[19] where it engages in activities that may only be performed by a licensed adjuster. This section exempts individual adjusters operating in their own names and insurance companies that directly appoint adjusters from the firm's licensing requirements.

A branch firm, established by a licensed adjusting firm, is not required to be licensed if:
- It transacts business under the same name and federal tax identification number as the licensed adjusting firm;
- It has designated with the DFS a licensed primary adjuster in charge of the branch firm as required by s. 626.8695, F.S.; and

[15] Section 626.8651, F.S.
[16] Section 626.8651(8), F.S.
[17] Section 626.8651(7), F.S.
[18] Section 626.8651(11), F.S.
[19] The bill allows an adjusting firm to have "branch" places of business that operate under the same license. A branch place of business must transact business under the same tax identification numbers as the licensed firm, must have a designated primary adjuster, and submit contact information to the DFS within 30 days after insurance transactions begin at the location.

- Within 30 days after insurance transactions begin at the branch firm, the address and telephone number of the branch firm are submitted to the DFS for inclusion in the licensing record of the licensed adjusting firm.

This section provides for fines of $2,500 for a first time violation and up to $10,000 for any subsequent violation, if a firm is required to be licensed, but does not file an application.

Section 14 amends s. 626.8695, F.S., to require each business location established by an adjuster to designate a primary adjuster for that location. It also requires adjusting firms and branch locations of the adjusting firms to name primary adjusters. The primary adjuster is responsible for the supervision of the adjusters at that location. The primary adjuster is accountable for misconduct by those under his or her direct supervision. This section does not render a primary adjuster criminally liable to an act unless the primary adjuster personally committed the act, knew or should have known about the act constituting a violation of this act. Furthermore, this section adds contractor to the language whereby DFS may suspend or revoke the license of any adjuster employed [or contracted] by a person whose license has been suspended or revoked.

An adjusting firm location may not conduct insurance business unless a primary adjuster is designated and provides services to the firm at all times. If a primary adjuster ends his or her affiliation with the firm and the firm does not designate another primary adjuster within 90 days, the firm's license expires on the 91st day.

Any adjusting firm may determine a person's current licensure status by submitting an appointment request to the DFS.

Section 15 amends s. 628.8696, F.S., to revise the application process for an adjusting firm license. It allows a third party to sign the application on the firm's behalf but the applicant is accountable for any errors or misstatements. The application for an adjusting firm license must include:

- The names of the president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the firm;
- The resident address of each person required to be listed in the application;
- The name, principal street address, and valid e-mail address of the adjusting firm, registered agent, person or company authorized to accept service on behalf of the firm;
- The physical address of each branch firm, including its name, valid email address, and telephone number and the date the branch firm began transacting insurance business;
- The name of the primary adjuster in full-time charge of the adjusting firm office, including branch firms, and corresponding location;
- It requires fingerprint background checks on the following:
  - A sole proprietor, if the applicant is a sole proprietor; and
  - Each individual who directs or participates in the management or control of an incorporated firm whose shares are not traded on a securities exchange; and
- Any additional information the DFS requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain such persons meet the requirements of this code. However, the DFS may not require credit or character reports be submitted for such persons.

Fingerprints submitted to the DFS must be:
- Submitted by a law enforcement agency or other entity approved by the DFS;
- Accompanied by a fingerprint processing fee;[20] and
- Processed in accordance with s. 624.34, F.S.

However, fingerprints of currently licensed and appointed individuals, under this act, do not need to be filed with the DFS.

An adjusting firm license will remain in force unless canceled, suspended, revoked or otherwise terminated or expired by operation of law.

Adjusters (Sections 2, 7, 11, 16, 17, 18 and 19)

Section 2 defines "adjuster" as a public adjuster[21] or an all-lines adjuster. It allows an "all-lines adjuster" to act on behalf of a public adjuster. This conforms to the elimination of the licensure classification for public adjuster apprentices and their reclassification as licensed all-lines adjusters appointed and employed by a public adjuster or public adjusting firm.

Section 7 amends s. 626.8548, F.S., and redefines an "all-lines adjuster" as "a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage." This section further directs that an "all-lines adjuster" also includes "any person who, for money, commission, or any other thing of value, directly or indirectly solicits claims on behalf of a public adjuster, but does not include a paid spokesperson used as part of a written or an electronic advertisement or a person who photographs or inventories damaged personal property or business personal property if such person does not otherwise adjust, investigate, or negotiate for or attempt to effect the settlement of a claim."

Section 11 amends s. 626.864, F.S., to provide that an all-lines adjuster may be appointed as an independent adjuster, a public adjuster apprentice, or a company employee adjuster but not more than one concurrently.

Section 16 repeals s. 626.872, F.S., which created temporary licenses for all-lines adjusters.

Section 17 amends s. 626.874, F.S., to clarify that only authorized insurers or adjusting firms contracted with authorized insurers may designate emergency adjusters for temporary licensure by the DFS during a catastrophe.

Section 18 amends s. 626.875, F.S., to require adjusters to maintain records relating to claims for five years instead of the current three years.

[20] Section 624.01, F.S.
[21] *See* s. 626.854, F.S.

Section 19 amends s. 626.876, F.S., to provide that an individual licensed as a public adjuster may not be simultaneously licensed as an all-lines adjuster. It further provides that an individual licensed as an all-lines adjuster and appointed as a company adjuster or a public adjuster apprentice may not be simultaneously appointed or employed in a different adjuster capacity that would require an additional appointment type.

Public Adjusters (Sections 5 and 12)

Section 5 amends s. 626.854, F.S., to expand the definition of "public adjuster" to include persons who directly or indirectly prepare, complete, or file an insurance claim for an insured. The definition is further expanded to include persons who directly or indirectly solicit or perform specified other duties on behalf of a public adjuster, an insured, or a third-party claimant. It provides that the term does not include a person who photographs or inventories damaged personal property or a person performing duties under another professional license if the person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim. It also removes a limitation that requires a consumer wishing to cancel a public adjuster contract to do so in writing or by phone.

This section repeals the restrictions on public adjuster solicitations within 48 hours after an event that may be the subject of an insurance claim.

The section prohibits public adjusters from charging a fee based on policy deductibles.

The section prohibits a contract provision that allows a public adjuster, public adjuster apprentice, or person acting on behalf of an adjuster or apprentice to choose the person that will perform repair work on a property insurance claim or provide goods or services that will require the insured or third-party claimant to expend funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services.

Furthermore, this section creates a new paragraph to more specifically define what a person is prohibited from doing unless the person is a public adjuster or an attorney. A person who is not a public adjuster or attorney may not, for money or commission:

- Prepare, complete, or file an insurance claim for an insured or a third-party claimant;
- Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;
- Advertise for employment as a public adjuster; or
- Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

Section 12 amends s. 626.865, F.S., to require a public adjuster, as part of the qualification and bond process, to be:

- Licensed in Florida as an all-lines adjuster; and
- To have been appointed on a continual basis for the previous six months as:
  - A public service apprentice under s. 626.8561, F.S.;
  - As an independent adjuster under s. 626.855, F.S.; or
  - As a company employee adjuster under s. 626.856, F.S.

Current law requires a public adjuster apprentice to serve as a public adjuster apprentice for one year before becoming a public adjuster. This section reduces the time to six months.

Public Adjuster Apprentices (Sections 6, 8 and 13)

Section 6 repeals s. 626.8541, F.S., which is the current law creating the license for public adjuster apprentices.

Section 8 creates s. 626.8561, F.S., to define a "public adjuster apprentice" as a person licensed as an all-lines adjuster who is appointed and employed by a public adjuster or public adjusting firm. The apprentice assists the public adjuster in determining the amount of any claim, loss or damage payable under an insurance contract.

Section 13 amends s. 626.8651, F.S., to provide the DFS will issue an appointment as a public adjuster apprentice to licensee who:

- Is licensed as an all-lines adjuster;
- Has filed with the DFS a bond[22] executed and issued by a surety insurer in the amount of $50,000, which is conditioned upon the faithful performance of duties as a public adjuster apprentice; and
- Maintains such bond unimpaired throughout the existence of the appointment and for at least one year after termination of the appointment.

This section provides that an appointing public adjusting firm may maintain no more than four public adjuster apprentices and that a supervising public adjuster may supervise no more than one apprentice at a time.

This section removes the limitation on solicitation of contracts by public adjuster apprentices.

Miscellaneous Provisions (Sections 9, 10, 20 - 22.)

Section 9 amends s. 626.8584, F.S., to add a public adjuster or a public adjusting firm to the list of persons or entities who can appoint, employ or contract with a nonresident all-lines adjuster.

Under current law, a "nonresident all-lines adjuster" means a person who is:

- Not a resident of Florida;
- Currently licensed as an adjuster in his or her state of residence for all lines of insurance except life and annuities or, if a resident of a state that does not license such adjusters, meets the qualifications prescribed in s. 626.8734, F.S.; and
- Licensed as an all-lines adjuster and self-appointed or appointed and employed by an independent adjusting firm or other independent adjuster, by an insurer admitted to do business in this state or wholly owned subsidiary of an insurer admitted to do business in this state, or by other insurers under the common control or ownership of such insurer.[23]

[22] The bond must be executed in favor of the DFS and must authorize recovery of the damages sustained if the licensee commits fraud or unfair practices. The aggregate liability of the surety may not exceed the amount of the bond and the bond may not be terminated without giving notice to the licensee and the DFS.
[23] Section 626.8584, F.S.

This section removes the language, "other insurers under the common control or ownership of such insurer."

Section 10 amends s. 626.861, F.S., to provide that an employee of an insurer handling claims with respect to residential property insurance can adjust such claims if the coverage does not exceed $500.

Section 20 repeals s. 626.879, F.S., which allows the DFS to have a pool of adjusters in case of declarations of emergency. The DFS has not used the pool in a number of years and does not believe the statute is necessary.

Section 21 amends s. 626.9953, F.S., to make a technical change.

Section 22 provides an effective date of 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:

The impact to the private sector is indeterminate. However, the Office of Insurance Regulation indicates "tightening the licensing requirements of public adjusters may result in improved insurer loss trends."[24]

C. Government Sector Impact:

The Department of Financial Services (DFS) anticipates $2,500 per year in recurring revenue from penalties imposed for failing to obtain a license as an adjusting firm.

[24] Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

The DFS will need to make updates to its licensing system to allow for adjusting firm licenses; however, these changes will be absorbed within existing resources.[25]

The Office of Insurance Regulation does not anticipate any impact to state funds or expenditures.[26]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.501, 626.015, 626.022, 626.112, 626.854, 626.8541, 626.8548, 626.8561, 626.8584, 626.861, 626.864, 626.865, 626.8651, 626.8695, 626.8696, 626.874, 626.875, 626.876, and 626.9953.

This bill repeals the following sections of the Florida Statutes: 626.872 and 626.879.

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 18, 2017:
The committee substitute amends definitions of "public adjuster" and "all-lines adjuster" to exclude persons who photograph or inventory damaged property or persons performing duties under another professional license as long as the person does not otherwise act as an adjuster.

CS by Banking and Insurance on April 3, 2017:
- Creates a minimum $2,500 penalty if a firm is required to be licensed but does not apply for a license;
- Removes a requirement that adjuster websites contain certain disclosures;
- Clarifies that paid spokespersons are exempt from licensure when promoting services; and
- Makes technical changes.

[25] Department of Financial Services, *Senate Bill 922 Fiscal Analysis* (April 3, 2017) (on file with the Senate Appropriations Subcommittee on General Government).
[26] Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 626.015, Florida Statutes, is amended to read:

626.015 Definitions.—As used in this part:

(1) "Adjuster" means a public adjuster as defined in s. 626.854~~, a public adjuster apprentice as defined in s. 626.8541,~~ or an all-lines adjuster as defined in s. 626.8548.

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Section 2. Present subsections (7) through (19) of section 626.854, Florida Statutes, are renumbered as subsections (6) through (18), respectively, subsection (1) and present subsections (6), (7), (11), (18), and (19) are amended, and a new subsection (19) is added to that section, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(1) A "public adjuster" is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim ~~form~~ for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant. The term does not include a person who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license, if such person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim.

~~(6) A public adjuster may not directly or indirectly~~


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~~through any other person or entity initiate contact or engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.~~

(6) ~~(7)~~ An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 3 business days after the date on which the contract is executed or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, ~~by phone or in writing,~~ whichever is later. The public adjuster's contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract.

(10)(a) ~~(11)(a)~~ If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or


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previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance claim payments made by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

(c) Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

(d) ~~(c)~~ Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of this chapter punishable as provided under s. 626.8698.


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(17)~~(18)~~ A public adjuster, a public adjuster apprentice, or a person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the effective authority to choose the persons or entities that will perform repair work in a property insurance claim or provide goods or services that will require the insured or third-party claimant to expend funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services.

(18)~~(19)~~ Subsections (5)-(17) ~~(5)-(18)~~ apply only to residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

(19) Except as otherwise provided in this chapter, no person, except an attorney at law or a public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Advertise for employment as a public adjuster; or

(d) Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

Section 3. Section 626.8541, Florida Statutes, is repealed.

Section 4. Section 626.8548, Florida Statutes, is amended to read:

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626.8548 "All-lines adjuster" defined.—An "all-lines adjuster" is a person who, for money, commission, or any other thing of value, directly or indirectly ~~is self-employed or employed by an insurer, a wholly owned subsidiary of an insurer, or an independent adjusting firm or other independent adjuster, and who~~ undertakes on behalf of a public adjuster or an insurer ~~or other insurers under common control or ownership~~ to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits claims on behalf of a public adjuster, but does not include a paid spokesperson used as part of a written or an electronic advertisement or a person who photographs or inventories damaged personal property or business personal property if such person does not otherwise adjust, investigate, or negotiate for or attempt to effect the settlement of a claim. The term does not apply to life insurance or annuity contracts.

Section 5. Section 626.8561, Florida Statutes, is created to read:

626.8561 "Public adjuster apprentice" defined.—The term "public adjuster apprentice" means a person licensed as an all-lines adjuster who:

(1) Is appointed and employed or contracted by a public adjuster or a public adjusting firm;

(2) Assists the public adjuster or public adjusting firm in ascertaining and determining the amount of any claim, loss, or damage payable under an insurance contract, or who undertakes to

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effect settlement of such claim, loss, or damage; and

(3) Satisfies the requirements of s. 626.8651.

Section 6. Subsection (3) of section 626.8584, Florida Statutes, is amended to read:

626.8584 "Nonresident all-lines adjuster" defined.—A "nonresident all-lines adjuster" means a person who:

(3) Is licensed as an all-lines adjuster and self-appointed or appointed and employed or contracted by an independent adjusting firm or other independent adjuster, by an insurer admitted to do business in this state or a wholly owned subsidiary of an insurer admitted to do business in this state, or by a public adjuster or a public adjusting firm ~~other insurers under the common control or ownership of such insurer~~.

Section 7. Subsection (1) of section 626.861, Florida Statutes, is amended to read:

626.861 Insurer's officers, insurer's employees, reciprocal insurer's representatives; adjustments by.—

(1) ~~Nothing in~~ This part may not ~~shall~~ be construed to prevent an executive officer of any insurer, an ~~or a regularly salaried~~ employee of an insurer handling claims with respect to health insurance, an employee of an insurer handling claims with respect to residential property insurance in which the amount of coverage for the applicable type of loss is contractually limited to $500 or less, or the duly designated attorney or agent authorized and acting for subscribers to reciprocal insurers~~,~~ from adjusting any claim loss or damage under any insurance contract of such insurer.

Section 8. Subsection (3) of section 626.864, Florida Statutes, is amended to read:

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626.864 Adjuster license types.—

(3) An all-lines adjuster may be appointed as an independent adjuster, public adjuster apprentice, or company employee adjuster, but not more than one of these ~~both~~ concurrently.

Section 9. Paragraphs (d) and (e) of subsection (1) of section 626.865, Florida Statutes, are amended to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

(d) Has had sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts, other than life and annuity contracts, is sufficiently informed as to the terms and effects of the provisions of those types of insurance contracts, and possesses adequate knowledge of the laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom the applicant may have business as a public adjuster~~, or has been licensed and employed as a resident insurance company adjuster or independent adjuster in this state on a continual basis for the past year~~.

(e) Has been licensed in this state as an all-lines adjuster, and has been appointed on a continual basis for the previous 6 months ~~Is licensed~~ as a public adjuster apprentice under s. 626.8561, as an independent adjuster under s. 626.855, or as a company employee adjuster under s. 626.856 ~~under s.~~

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~~626.8651 and complies with the requirements of that license throughout the licensure period~~.

Section 10. Section 626.8651, Florida Statutes, is amended to read:

626.8651 Public adjuster apprentice appointment ~~license~~; qualifications.—

(1)(a) The department shall issue an appointment ~~a license~~ as a public adjuster apprentice to a licensee ~~an applicant~~ who ~~is~~:

1. Is licensed as an all-lines adjuster under s. 626.866;

2. Has filed with the department a bond executed and issued by a surety insurer that is authorized to transact such business in this state in the amount of $50,000, which is conditioned upon the faithful performance of his or her duties as a public adjuster apprentice; and

3. Maintains such bond unimpaired throughout the existence of the appointment and for at least 1 year after termination of the appointment.

(b) The bond must be in favor of the department and must specifically authorize recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.

~~(a) A natural person at least 18 years of age.~~

~~(b) A United States citizen or legal alien who possesses~~

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~~work authorization from the United States Bureau of Citizenship and Immigration Services.~~

~~(c) Trustworthy and has such business reputation as would reasonably ensure that the applicant will conduct business as a public adjuster apprentice fairly and in good faith and without detriment to the public.~~

~~(2) All applicable license fees, as prescribed in s. 624.501, must be paid in full before issuance of the license.~~

~~(3) An applicant must pass the required written examination before a license may be issued.~~

~~(4) An applicant must have received designation as an Accredited Claims Adjuster (ACA), as a Certified Adjuster (CA), or as a Certified Claims Adjuster (CCA) after completion of training that qualifies the applicant to engage in the business of a public adjuster apprentice fairly and without injury to the public. Such training and instruction must address adjusting damages and losses under insurance contracts, the terms and effects of insurance contracts, and knowledge of the laws of this state relating to insurance contracts.~~

~~(5) At the time of application for license as a public adjuster apprentice, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state in the amount of $50,000, conditioned upon the faithful performance of his or her duties as a public adjuster apprentice under the license for which the applicant has applied, and thereafter maintain the bond unimpaired throughout the existence of the license and for at least 1 year after termination of the license. The bond shall be in favor of the department and shall specifically authorize~~

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~~recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.~~

~~(6) A public adjuster apprentice shall complete at a minimum 100 hours of employment per month for 12 months of employment under the supervision of a licensed and appointed all-lines public adjuster in order to qualify for licensure as a public adjuster. The department may adopt rules that establish standards for such employment requirements.~~

(2)~~(7)~~ An appointing public adjusting firm may not maintain more than four ~~12~~ public adjuster apprentices simultaneously. However, a supervising public adjuster may not be responsible for more than one ~~three~~ public adjuster apprentice ~~apprentices~~ simultaneously and shall be accountable for the acts of the ~~all~~ public adjuster apprentice ~~apprentices~~ which are related to transacting business as a public adjuster apprentice. This subsection does not apply to a public adjusting firm that adjusts claims primarily for commercial entities with operations in more than one state and that does not directly or indirectly perform adjusting services for insurers or individual homeowners.

~~(8) An apprentice license is effective for 18 months unless the license expires due to lack of maintaining an appointment; is surrendered by the licensee; is terminated, suspended, or~~

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~~revoked by the department; or is canceled by the department upon issuance of a public adjuster license. The department may not issue a public adjuster apprentice license to any individual who has held such a license in this state within 2 years after expiration, surrender, termination, revocation, or cancellation of the license.~~

~~(9) After completing the requirements for employment as a public adjuster apprentice, the licensee may file an application for a public adjuster license. The applicant and supervising public adjuster or public adjusting firm must each file a sworn affidavit, on a form prescribed by the department, verifying that the employment of the public adjuster apprentice meets the requirements of this section.~~

~~(10) In no event shall A public adjuster apprentice licensed under this section perform any of the functions for which a public adjuster's license is required after expiration of the public adjuster apprentice license without having obtained a public adjuster license.~~

(3) ~~(11)~~ A public adjuster apprentice has the same authority as the licensed public adjuster or public adjusting firm that employs the apprentice except that an apprentice may not execute contracts for the services of a public adjuster or public adjusting firm ~~and may not solicit contracts for the services except under the direct supervision and guidance of the supervisory public adjuster~~. An individual may not be, act as, or hold himself or herself out to be a public adjuster apprentice unless the individual is licensed as an all-lines adjuster and holds a current appointment by a licensed public all-lines adjuster or a public adjusting firm that employs a


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licensed ~~all-lines~~ public adjuster.

Section 11. Section 626.8695, Florida Statutes, is amended to read:

626.8695 Primary adjuster.—

(1) Each business location established by an adjuster, ~~person operating~~ an adjusting firm, a corporation, or an association ~~and each location of a multiple location adjusting firm~~ must designate with the department a primary adjuster who is licensed and appointed to adjust the insurance claims adjusted by the business location.

(2) An adjusting firm and each of its branch firms shall designate a primary adjuster ~~for each such firm or location~~ and ~~must~~ file with the department, at the department's designated website, the name and license number of such primary adjuster and the physical address of the adjusting firm or branch firm location where he or she is the primary adjuster~~, on a form approved by the department~~. The designation of the primary adjuster may be changed at the option of the adjusting firm. Any such change is effective upon notification to the department. Notice of change must be provided ~~sent~~ to the department within 30 days after such change.

(3) ~~(2)(a)~~ For purposes of this section, a "primary adjuster" is the licensed adjuster who is responsible for the ~~hiring and~~ supervision of all individuals within an adjusting firm location who act ~~deal with the public and who acts~~ in the capacity of ~~a public adjuster as defined in s. 626.854, or~~ an ~~independent~~ adjuster as defined in this chapter ~~s. 626.855~~. An adjuster may be designated as a primary adjuster for more than ~~only~~ one adjusting firm location provided no person engages in

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activity requiring licensure as an adjuster at any location when an adjuster is not physically present.

(4) ~~(b)~~ For purposes of this section, an "adjusting firm" is a location where an independent or public adjuster is engaged in the business of insurance.

(5) ~~(3)~~ The department may suspend or revoke the license of the primary adjuster if the adjusting firm employs or contracts any person who has had a license denied or any person whose license is currently suspended or revoked. However, if a person has been denied a license for failure to pass a required examination, he or she may be employed or contracted to perform clerical or administrative functions for which licensure is not required.

(6) ~~(4)~~ The primary adjuster in an ~~unincorporated~~ adjusting firm~~, or the primary adjuster in an incorporated adjusting firm in which no officer, director, or stockholder is an adjuster,~~ is ~~responsible and~~ accountable for misconduct or violations of this code committed by the primary adjuster or by any other person ~~the acts of salaried employees~~ under his or her direct supervision ~~and control~~ while acting on behalf of the adjusting firm. This section does not render a primary adjuster ~~Nothing in this section renders any person~~ criminally liable for an ~~or subject to any disciplinary proceedings for any~~ act unless the primary adjuster ~~person~~ personally committed the act or knew or should have known of the act and of the facts constituting a violation of this code.

(7) ~~(5)~~ The department may suspend or revoke the license of any adjuster who is employed or contracted by a person whose license is currently suspended or revoked.

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(8) ~~(6)~~ An adjusting firm location may not conduct the business of insurance unless a primary adjuster is designated and provides services to the firm at all times. If the ~~Failure of the person operating the adjusting firm to designate a~~ primary adjuster designated with the department ends his or her affiliation with the firm for any reason and if the firm fails to designate another primary adjuster, as required in subsection (2), within 90 days, the firm license automatically expires on the 91st day after the date the designated primary adjuster ended his or her affiliation with ~~for~~ the firm~~, or for each location, as applicable, on a form prescribed by the department within 30 days after inception of the firm or change of primary adjuster designation, constitutes grounds for requiring the adjusting firm to obtain an adjusting firm license pursuant to s. 626.8696~~.

(9) ~~(7)~~ Any adjusting firm may determine a ~~request, on a form prescribed by the department, verification from the department of any~~ person's current licensure status by submitting an appointment request~~. If a request is mailed to the office~~ within 5 working days after the date an adjuster is hired. If~~, and~~ the department subsequently notifies the adjusting firm that its appointee's ~~an employee's~~ license is currently suspended, revoked, or has been denied, the license of the primary adjuster may ~~shall~~ not be revoked or suspended if the unlicensed person is immediately dismissed from employment as an adjuster with the firm.

Section 12. Section 626.872, Florida Statutes, is repealed.

Section 13. Subsection (1) of section 626.874, Florida Statutes, is amended to read:


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626.874 Catastrophe or emergency adjusters.—

(1) In the event of a catastrophe or emergency, the department may issue a license, for the purposes and under the conditions and for the period of emergency as it shall determine, to persons who are residents or nonresidents of this state, who are at least 18 years of age, who are United States citizens or legal aliens who possess work authorization from the United States Bureau of Citizenship and Immigration Services, and who are not licensed adjusters under this part but who have been designated and certified to it as qualified to act as adjusters ~~by all-lines resident adjusters,~~ by an authorized insurer~~, or by a licensed general lines agent~~ to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurers, or by the primary adjuster of an independent adjusting firm contracted with an authorized insurer to adjust claims on behalf of the insurer. The fee for the license is as provided in s. 624.501(12)(c).

Section 14. Subsection (2) of section 626.875, Florida Statutes, is amended to read:

626.875 Office and records.—

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 5 ~~3~~ years after completion of the adjustment. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto.

Section 15. Section 626.876, Florida Statutes, is amended to read:

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626.876 Exclusive employment; public adjusters, all-lines ~~independent~~ adjusters.—

(1) An individual licensed ~~and appointed~~ as a public adjuster may not be simultaneously licensed as an all-lines adjuster ~~employed during the same period by more than one public adjuster or public adjuster firm or corporation~~.

(2) An individual licensed as an all-lines adjuster and appointed as an independent adjuster, a company employee adjuster, or a public adjuster apprentice may not be simultaneously appointed, contracted, or employed as an adjuster that requires a different appointment type ~~during the same period by more than one independent adjuster or independent adjuster firm or corporation~~.

Section 16. Section 626.879, Florida Statutes, is repealed.

Section 17. This act shall take effect January 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to insurance adjusters; amending s. 626.015, F.S.; conforming a cross-reference; amending s. 626.854, F.S.; redefining the term "public adjuster"; deleting a certain prohibited act of a public adjuster; deleting a provision specifying the methods for an insured or claimant to provide certain notice to an insurer; providing construction relating to certain limitations on insurance claim payments and


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public adjuster compensation; revising a prohibition against certain entities relating to a contract or power of attorney that vests certain authority in a property insurance claim; conforming a cross-reference; prohibiting persons from conducting certain activities relating to insurance claims; providing an exception for attorneys and public adjusters; repealing s. 626.8541, F.S., relating to public adjuster apprentices; amending s. 626.8548, F.S.; redefining the term "all-lines adjuster"; creating s. 626.8561, F.S.; defining the term "public adjuster apprentice"; amending s. 626.8584, F.S.; redefining the term "nonresident all-lines adjuster"; amending s. 626.861, F.S.; revising construction relating to employees of an insurer; amending s. 626.864, F.S.; revising the permissible appointments of all-lines adjusters; amending s. 626.865, F.S.; revising the qualifications for licensure for public adjusters; amending s. 626.8651, F.S.; requiring public adjuster apprentices to be appointed, rather than licensed, by the Department of Financial Services; specifying qualifications for such appointments; revising requirements and limitations for public adjusting firms and public adjusters who supervise public adjuster apprentices; revising certain prohibited acts and exceptions to such acts of public adjuster apprentices; conforming provisions to changes made by the act; amending s. 626.8695, F.S.; revising requirements for designating primary adjusters;


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redefining the term "primary adjuster"; revising the accountability of a primary adjuster for persons under his or her supervision; revising a prohibition against an adjusting firm location conducting insurance business under certain circumstances; revising procedures for an adjusting firm to determine a person's current licensure status; repealing s. 626.872, F.S., relating to all-lines adjuster temporary licenses; amending s. 626.874, F.S.; revising conditions for the department to issue adjuster licenses in the event of catastrophes or emergencies; amending s. 626.875, F.S.; revising the minimum time period for a records retention requirement for adjusters; amending s. 626.876, F.S.; revising certain prohibitions relating to exclusive employment of public adjusters and specified all-lines adjusters; repealing s. 626.879, F.S., relating to pools of insurance adjusters; providing an effective date.

662786

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment to Amendment (603728) (with title amendment)

Delete lines 340 - 397
and insert:
(2) An adjusting firm and each of its business locations shall designate a primary adjuster ~~for each such firm or location~~ and ~~must~~ file with the department, at the department's designated website, the name and license number of such primary adjuster and the physical address of the adjusting firm or

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business location where he or she is the primary adjuster~~, on a form approved by the department~~. The designation of the primary adjuster may be changed at the option of the adjusting firm. Any such change is effective upon notification to the department. Notice of change must be provided ~~sent~~ to the department within 30 days after such change.

(3)~~(2)(a)~~ For purposes of this section, a "primary adjuster" is the licensed adjuster who is responsible for the ~~hiring and~~ supervision of all individuals within an adjusting firm location who act ~~deal with the public and who acts~~ in the capacity of ~~a public adjuster as defined in s. 626.854, or~~ an ~~independent~~ adjuster as defined in this chapter ~~s. 626.855~~. An adjuster may be designated as a primary adjuster for more than ~~only~~ one adjusting firm location provided no person engages in activity requiring licensure as an adjuster at any location when an adjuster is not physically present.

(4)~~(b)~~ For purposes of this section, an "adjusting firm" is a location where an independent or public adjuster is engaged in the business of insurance.

(5)~~(3)~~ The department may suspend or revoke the license of the primary adjuster if the adjusting firm employs or contracts any person who has had a license denied or any person whose license is currently suspended or revoked. However, if a person has been denied a license for failure to pass a required examination, he or she may be employed or contracted to perform clerical or administrative functions for which licensure is not required.

(6)~~(4)~~ The primary adjuster in an ~~unincorporated~~ adjusting firm~~, or the primary adjuster in an incorporated adjusting firm~~

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~~in which no officer, director, or stockholder is an adjuster,~~ is ~~responsible and~~ accountable for misconduct or violations of this code committed by the primary adjuster or by any other person ~~the acts of salaried employees~~ under his or her direct supervision ~~and control~~ while acting on behalf of the adjusting firm. This section does not render a primary adjuster ~~Nothing in this section renders any person~~ criminally liable for an ~~or subject to any disciplinary proceedings for any~~ act unless the primary adjuster ~~person~~ personally committed the act or knew or should have known of the act and of the facts constituting a violation of this code.

(7) ~~(5)~~ The department may suspend or revoke the license of any adjuster who is employed or contracted by a person whose license is currently suspended or revoked.

(8) ~~(6)~~ An adjusting firm ~~location~~ may not conduct the business of insurance unless a primary adjuster is designated and provides services to the firm at all times. If the ~~Failure of the person operating the adjusting firm to designate a~~ primary adjuster designated with the department ends his or her affiliation with the firm for any reason and if the firm fails to designate another primary adjuster for a business location as required in subsection (2), the firm must cease operations at the location until a primary adjuster is appointed ~~for the firm, or for each~~

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

And the title is amended as follows:

Delete lines 507 - 508

and insert:

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an adjusting firm conducting insurance business under certain circumstances; revising a requirement if the firm fails to designate a primary adjuster under certain circumstances; revising


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576-04073-17

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

A bill to be entitled

An act relating to insurance adjusters; amending s. 624.501, F.S.; deleting a fee for an original or renewal license for an adjusting firm; amending s. 626.015, F.S.; conforming a cross-reference; amending s. 626.022, F.S.; revising applicability of the Licensing Procedures Law to include adjusting firms; amending s. 626.112, F.S.; prohibiting certain entities from acting as insurance adjusting firms without specified licenses; providing an exemption; providing construction; specifying that an unlicensed firm is subject to a certain administrative penalty; deleting a requirement for the Department of Financial Services to automatically convert a certain registration to an insurance agency license as of a certain date; amending s. 626.854, F.S.; redefining the term "public adjuster"; deleting a certain prohibited act of a public adjuster; deleting a provision specifying the method for an insured or claimant to provide certain notice to an insurer; providing construction relating to certain limitations on insurance claim payments and public adjuster compensation; revising a prohibition against certain entities relating to a contract or power of attorney that vests certain authority in a property insurance claim; conforming a cross-reference; prohibiting persons from conducting certain activities relating to


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insurance claims; providing an exception for attorneys and public adjusters; repealing s. 626.8541, F.S., relating to public adjuster apprentices; amending s. 626.8548, F.S.; redefining the term "all-lines adjuster"; creating s. 626.8561, F.S.; defining the term "public adjuster apprentice"; amending s. 626.8584, F.S.; redefining the term "nonresident all-lines adjuster"; amending s. 626.861, F.S.; revising construction relating to employees of an insurer; amending s. 626.864, F.S.; revising the permissible appointments of all-lines adjusters; amending s. 626.865, F.S.; revising the qualifications for licensure for public adjusters; amending s. 626.8651, F.S.; requiring public adjuster apprentices to be appointed, rather than licensed, by the department; specifying qualifications for such appointments; revising requirements and limitations for public adjusting firms and public adjusters who supervise public adjuster apprentices; revising certain prohibited acts and exceptions to such acts of public adjuster apprentices; conforming provisions to changes made by the act; amending s. 626.8695, F.S.; revising requirements for designating primary adjusters; redefining the term "primary adjuster"; revising the accountability of a primary adjuster for persons under his or her supervision; revising a prohibition against an adjusting firm location conducting insurance business under certain circumstances; revising procedures for an adjusting firm to determine a


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person's current licensure status; amending s. 626.8696, F.S.; revising conditions for the issuance of an adjusting firm license; revising application requirements for such license; providing rulemaking authority of the department; prohibiting the department from requiring certain information on an application; providing for expiration of such license; repealing s. 626.872, F.S., relating to all-lines adjuster temporary licenses; amending s. 626.874, F.S.; revising conditions for the department to issue adjuster licenses in the event of catastrophes or emergencies; amending s. 626.875, F.S.; revising the minimum time period in a records retention requirement for adjusters; amending s. 626.876, F.S.; revising certain prohibitions relating to exclusive employment of public adjusters and all-lines adjusters and appointed independent adjusters; repealing s. 626.879, F.S., relating to pools of insurance adjusters; amending s. 626.9953, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (20) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as


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follows:

~~(20) Adjusting firm, original or renewal 3-year license $60.00~~

Section 2. Subsection (1) of section 626.015, Florida Statutes, is amended to read:

626.015 Definitions.—As used in this part:

(1) "Adjuster" means a public adjuster as defined in s. 626.854~~, a public adjuster apprentice as defined in s. 626.8541,~~ or an all-lines adjuster as defined in s. 626.8548.

Section 3. Subsection (1) of section 626.022, Florida Statutes, is amended to read:

626.022 Scope of part.—

(1) This part applies as to insurance agents, service representatives, adjusters, adjusting firms, and insurance agencies; as to any and all kinds of insurance; and as to stock insurers, mutual insurers, reciprocal insurers, and all other types of insurers, except that:

(a) It does not apply as to reinsurance, except that ss. 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss. 626.291-626.301, s. 626.331, ss. 626.342-626.521, ss. 626.541-626.591, and ss. 626.601-626.711 shall apply as to reinsurance intermediaries as defined in s. 626.7492.

(b) The applicability of this chapter as to fraternal benefit societies shall be as provided in chapter 632.

(c) It does not apply to a bail bond agent, as defined in s. 648.25, except as provided in chapter 648 or chapter 903.

(d) This part does not apply to a certified public accountant licensed under chapter 473 who is acting within the scope of the practice of public accounting, as defined in s.


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473.302, provided that the activities of the certified public accountant are limited to advising a client of the necessity of obtaining insurance, the amount of insurance needed, or the line of coverage needed, and provided that the certified public accountant does not directly or indirectly receive or share in any commission or referral fee.

Section 4. Subsection (7) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, adjusting firms, service representatives, managing general agents.—

(7)(a) An individual, firm, partnership, corporation, association, or other entity may ~~shall~~ not act in its own name or under a trade name, directly or indirectly, as an insurance agency unless it complies with s. 626.172 with respect to possessing an insurance agency license for each place of business at which it engages in an activity that may be performed only by a licensed insurance agent. However, an insurance agency that is owned and operated by a single licensed agent conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is ~~shall be~~ exempt from the agency licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed agency is considered a branch agency and is not required to be licensed so long as it transacts business under the same name and federal tax identification number as the licensed agency and has designated with the department a licensed agent in charge of the branch location as required by


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s. 626.0428 and the address and telephone number of the branch location have been submitted to the department for inclusion in the licensing record of the licensed agency within 30 days after insurance transactions begin at the branch location.

(c) An individual, a firm, a partnership, a corporation, an association, or any other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it possesses an adjusting firm license under s. 626.8696 for each place of business at which it engages in an activity that may be performed only by a licensed adjuster. However, an insurance company authorized to transact insurance in this state which directly appoints adjusters, or an adjusting firm that is owned and operated by a single licensed adjuster who is conducting business in his or her individual name and who is not employing or otherwise using the services of or appointing other licensees, is exempt from the adjusting firm licensing requirements of this subsection.

(d) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed so long as:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a licensed primary adjuster in charge of the branch firm as required by s. 626.8695; and

3. Within 30 days after insurance transactions begin at the branch firm, the address and telephone number of the branch firm are submitted to the department for inclusion in the licensing record of the licensed adjusting firm.

(e) ~~(c)~~ If an agency or firm is required to be licensed but fails to file an application for licensure in accordance with this section, the department must ~~shall~~ impose on the agency or firm an administrative penalty of up to $2,500 for a first violation and up to $10,000 for any subsequent violation.

~~(d) Effective October 1, 2015, the department must automatically convert the registration of an approved registered insurance agency to an insurance agency license.~~

Section 5. Present subsections (7) through (19) of section 626.854, Florida Statutes, are renumbered as subsections (6) through (18), respectively, subsection (1) and present subsections (6), (7), (11), (18), and (19) are amended, and a new subsection (19) is added to that section, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(1) A "public adjuster" is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim ~~form~~ for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts

such claims on behalf of a public adjuster, an insured, or a third-party claimant. The term does not include a person who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license, if such person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim.

~~(6) A public adjuster may not directly or indirectly through any other person or entity initiate contact or engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.~~

(6) ~~(7)~~ An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 3 business days after the date on which the contract is executed or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, ~~by phone or in writing,~~ whichever is later. The public adjuster's contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed

to cancel a public adjuster's contract.

(10)(a) ~~(11)(a)~~ If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance claim payments made by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the

Governor.

(c) Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

(d) ~~(c)~~ Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of this chapter punishable as provided under s. 626.8698.

(17) ~~(18)~~ A public adjuster, a public adjuster apprentice, or a person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the effective authority to choose the persons or entities that will perform repair work in a property insurance claim or provide goods or services that will require the insured or third-party claimant to expend funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services.

(18) ~~(19)~~ Subsections (5)-(17) ~~(5)-(18)~~ apply only to residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

(19) Except as otherwise provided in this chapter, no person, except an attorney at law or a public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party


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claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Advertise for employment as a public adjuster; or

(d) Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

Section 6. Section 626.8541, Florida Statutes, is repealed.

Section 7. Section 626.8548, Florida Statutes, is amended to read:

626.8548 "All-lines adjuster" defined.—An "all-lines adjuster" is a person who, for money, commission, or any other thing of value, directly or indirectly ~~is self-employed or employed by an insurer, a wholly owned subsidiary of an insurer, or an independent adjusting firm or other independent adjuster, and who~~ undertakes on behalf of a public adjuster or an insurer ~~or other insurers under common control or ownership~~ to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits claims on behalf of a public adjuster, but does not include a paid spokesperson used as part of a written or an electronic advertisement or a person who photographs or inventories damaged personal property or business personal property if such person does not otherwise adjust, investigate, or negotiate for or attempt to effect the settlement of a claim. The term does not apply to life insurance or annuity contracts.

Section 8. Section 626.8561, Florida Statutes, is created to read:


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626.8561 "Public adjuster apprentice" defined.—The term "public adjuster apprentice" means a person licensed as an all-lines adjuster who:

(1) Is appointed and employed or contracted by a public adjuster or a public adjusting firm;

(2) Assists the public adjuster or public adjusting firm in ascertaining and determining the amount of any claim, loss, or damage payable under an insurance contract, or who undertakes to effect settlement of such claim, loss, or damage; and

(3) Satisfies the requirements of s. 626.8651.

Section 9. Subsection (3) of section 626.8584, Florida Statutes, is amended to read:

626.8584 "Nonresident all-lines adjuster" defined.—A "nonresident all-lines adjuster" means a person who:

(3) Is licensed as an all-lines adjuster and self-appointed or appointed and employed or contracted by an independent adjusting firm or other independent adjuster, by an insurer admitted to do business in this state or a wholly owned subsidiary of an insurer admitted to do business in this state, or by a public adjuster or a public adjusting firm ~~other insurers under the common control or ownership of such insurer~~.

Section 10. Subsection (1) of section 626.861, Florida Statutes, is amended to read:

626.861 Insurer's officers, insurer's employees, reciprocal insurer's representatives; adjustments by.—

(1) ~~Nothing in~~ This part may not ~~shall~~ be construed to prevent an executive officer of any insurer, an ~~or a regularly salaried~~ employee of an insurer handling claims with respect to health insurance, an employee of an insurer handling claims with


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respect to residential property insurance in which the amount of coverage for the applicable type of loss is contractually limited to $500 or less, or the duly designated attorney or agent authorized and acting for subscribers to reciprocal insurers~~,~~ from adjusting any claim loss or damage under any insurance contract of such insurer.

Section 11. Subsection (3) of section 626.864, Florida Statutes, is amended to read:

626.864 Adjuster license types.—

(3) An all-lines adjuster may be appointed as an independent adjuster, public adjuster apprentice, or company employee adjuster, but not more than one of these ~~both~~ concurrently.

Section 12. Paragraphs (d) and (e) of subsection (1) of section 626.865, Florida Statutes, are amended to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

(d) Has had sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts, other than life and annuity contracts, is sufficiently informed as to the terms and effects of the provisions of those types of insurance contracts, and possesses adequate knowledge of the laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom the applicant may have


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business as a public adjuster~~, or has been licensed and employed as a resident insurance company adjuster or independent adjuster in this state on a continual basis for the past year~~.

(e) Has been licensed in this state as an all-lines adjuster, and has been appointed on a continual basis for the previous 6 months ~~Is licensed~~ as a public adjuster apprentice under s. 626.8561, as an independent adjuster under s. 626.855, or as a company employee adjuster under s. 626.856 ~~under s. 626.8651 and complies with the requirements of that license throughout the licensure period~~.

Section 13. Section 626.8651, Florida Statutes, is amended to read:

626.8651 Public adjuster apprentice appointment ~~license~~; qualifications.—

(1)(a) The department shall issue an appointment ~~a license~~ as a public adjuster apprentice to a licensee ~~an applicant~~ who ~~is~~:

1. Is licensed as an all-lines adjuster under s. 626.866;

2. Has filed with the department a bond executed and issued by a surety insurer that is authorized to transact such business in this state in the amount of $50,000, which is conditioned upon the faithful performance of his or her duties as a public adjuster apprentice; and

3. Maintains such bond unimpaired throughout the existence of the appointment and for at least 1 year after termination of the appointment.

(b) The bond must be in favor of the department and must specifically authorize recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices

in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.

~~(a) A natural person at least 18 years of age.~~

~~(b) A United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services.~~

~~(c) Trustworthy and has such business reputation as would reasonably ensure that the applicant will conduct business as a public adjuster apprentice fairly and in good faith and without detriment to the public.~~

~~(2) All applicable license fees, as prescribed in s. 624.501, must be paid in full before issuance of the license.~~

~~(3) An applicant must pass the required written examination before a license may be issued.~~

~~(4) An applicant must have received designation as an Accredited Claims Adjuster (ACA), as a Certified Adjuster (CA), or as a Certified Claims Adjuster (CCA) after completion of training that qualifies the applicant to engage in the business of a public adjuster apprentice fairly and without injury to the public. Such training and instruction must address adjusting damages and losses under insurance contracts, the terms and effects of insurance contracts, and knowledge of the laws of this state relating to insurance contracts.~~

~~(5) At the time of application for license as a public adjuster apprentice, the applicant shall file with the~~

~~department a bond executed and issued by a surety insurer authorized to transact such business in this state in the amount of $50,000, conditioned upon the faithful performance of his or her duties as a public adjuster apprentice under the license for which the applicant has applied, and thereafter maintain the bond unimpaired throughout the existence of the license and for at least 1 year after termination of the license. The bond shall be in favor of the department and shall specifically authorize recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.~~

~~(6) A public adjuster apprentice shall complete at a minimum 100 hours of employment per month for 12 months of employment under the supervision of a licensed and appointed all-lines public adjuster in order to qualify for licensure as a public adjuster. The department may adopt rules that establish standards for such employment requirements.~~

(2) ~~(7)~~ An appointing public adjusting firm may not maintain more than four ~~12~~ public adjuster apprentices simultaneously. However, a supervising public adjuster may not be responsible for more than one ~~three~~ public adjuster apprentice ~~apprentices~~ simultaneously and shall be accountable for the acts of the ~~all~~ public adjuster apprentice ~~apprentices~~ which are related to transacting business as a public adjuster apprentice. This

subsection does not apply to a public adjusting firm that adjusts claims primarily for commercial entities with operations in more than one state and that does not directly or indirectly perform adjusting services for insurers or individual homeowners.

~~(8) An apprentice license is effective for 18 months unless the license expires due to lack of maintaining an appointment; is surrendered by the licensee; is terminated, suspended, or revoked by the department; or is canceled by the department upon issuance of a public adjuster license. The department may not issue a public adjuster apprentice license to any individual who has held such a license in this state within 2 years after expiration, surrender, termination, revocation, or cancellation of the license.~~

~~(9) After completing the requirements for employment as a public adjuster apprentice, the licensee may file an application for a public adjuster license. The applicant and supervising public adjuster or public adjusting firm must each file a sworn affidavit, on a form prescribed by the department, verifying that the employment of the public adjuster apprentice meets the requirements of this section.~~

~~(10) In no event shall A public adjuster apprentice licensed under this section perform any of the functions for which a public adjuster's license is required after expiration of the public adjuster apprentice license without having obtained a public adjuster license.~~

(3) ~~(11)~~ A public adjuster apprentice has the same authority as the licensed public adjuster or public adjusting firm that employs the apprentice except that an apprentice may not execute

contracts for the services of a public adjuster or public adjusting firm ~~and may not solicit contracts for the services except under the direct supervision and guidance of the supervisory public adjuster~~. An individual may not be, act as, or hold himself or herself out to be a public adjuster apprentice unless the individual is licensed as an all-lines adjuster and holds a current appointment by a licensed public all-lines adjuster or a public adjusting firm that employs a licensed ~~all-lines~~ public adjuster.

Section 14. Section 626.8695, Florida Statutes, is amended to read:

626.8695 Primary adjuster.—

(1) Each business location established by an adjuster, ~~person operating~~ an adjusting firm, a corporation, or an association ~~and each location of a multiple location adjusting firm~~ must designate with the department a primary adjuster who is licensed and appointed to adjust the insurance claims adjusted by the business location.

(2) An adjusting firm and each of its branch firms shall designate a primary adjuster ~~for each such firm or location~~ and ~~must~~ file with the department, at the department's designated website, the name and license number of such primary adjuster and the physical address of the adjusting firm or branch firm location where he or she is the primary adjuster~~, on a form approved by the department~~. The designation of the primary adjuster may be changed at the option of the adjusting firm. Any such change is effective upon notification to the department. Notice of change must be provided ~~sent~~ to the department within 30 days after such change.

(3) ~~(2)(a)~~ For purposes of this section, a "primary adjuster" is the licensed adjuster who is responsible for the ~~hiring and~~ supervision of all individuals within an adjusting firm location who act ~~deal with the public and who acts~~ in the capacity of ~~a public adjuster as defined in s. 626.854, or~~ an ~~independent~~ adjuster as defined in this chapter ~~s. 626.855~~. An adjuster may be designated as a primary adjuster for more than ~~only~~ one adjusting firm location provided no person engages in activity requiring licensure as an adjuster at any location when an adjuster is not physically present.

(4) ~~(b)~~ For purposes of this section, an "adjusting firm" is a location where an independent or public adjuster is engaged in the business of insurance.

(5) ~~(3)~~ The department may suspend or revoke the license of the primary adjuster if the adjusting firm employs or contracts any person who has had a license denied or any person whose license is currently suspended or revoked. However, if a person has been denied a license for failure to pass a required examination, he or she may be employed or contracted to perform clerical or administrative functions for which licensure is not required.

(6) ~~(4)~~ The primary adjuster in an ~~unincorporated~~ adjusting firm~~, or the primary adjuster in an incorporated adjusting firm in which no officer, director, or stockholder is an adjuster,~~ is ~~responsible and~~ accountable for misconduct or violations of this code committed by the primary adjuster or by any other person ~~the acts of salaried employees~~ under his or her direct supervision ~~and control~~ while acting on behalf of the adjusting firm. This section does not render a primary adjuster ~~Nothing in~~

~~this section renders any person~~ criminally liable for an ~~or subject to any disciplinary proceedings for any~~ act unless the primary adjuster ~~person~~ personally committed the act or knew or should have known of the act and of the facts constituting a violation of this code.

(7) ~~(5)~~ The department may suspend or revoke the license of any adjuster who is employed or contracted by a person whose license is currently suspended or revoked.

(8) ~~(6)~~ An adjusting firm location may not conduct the business of insurance unless a primary adjuster is designated and provides services to the firm at all times. If the ~~Failure of the person operating the adjusting firm to designate a~~ primary adjuster designated with the department ends his or her affiliation with the firm for any reason and if the firm fails to designate another primary adjuster, as required in subsection (2), within 90 days, the firm license automatically expires on the 91st day after the date the designated primary adjuster ended his or her affiliation with ~~for~~ the firm~~, or for each location, as applicable, on a form prescribed by the department within 30 days after inception of the firm or change of primary adjuster designation, constitutes grounds for requiring the adjusting firm to obtain an adjusting firm license pursuant to s. 626.8696~~.

(9) ~~(7)~~ Any adjusting firm may determine a ~~request, on a form prescribed by the department, verification from the department of any~~ person's current licensure status by submitting an appointment request~~. If a request is mailed to the office~~ within 5 working days after the date an adjuster is hired. If~~, and~~ the department subsequently notifies the

adjusting firm that its appointee's ~~an employee's~~ license is currently suspended, revoked, or has been denied, the license of the primary adjuster may ~~shall~~ not be revoked or suspended if the unlicensed person is immediately dismissed from employment as an adjuster with the firm.

Section 15. Section 626.8696, Florida Statutes, is amended to read:

626.8696 Application for adjusting firm license.—

(1) The department may issue an adjusting firm license to a person only after the person files a written application with the department and qualifies for such license.

(2) An application for an adjusting firm license must be signed by an individual required to be listed in the application under paragraph (a). An adjusting firm may authorize a third party to complete, submit, and sign an application on the firm's behalf. However, the firm must ensure that the information on the application is true and correct, and the firm is accountable for any misstatement or misrepresentation. The application for an adjusting firm license must include:

(a) The name of each majority owner, partner, officer, ~~and~~ director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management or control of the adjusting firm.

(b) The resident address of each person required to be listed in the application under paragraph (a).

(c) The name, ~~of the adjusting firm and its~~ principal business street address, and valid e-mail address of the adjusting firm, and the name, street address, and valid e-mail address of the firm's registered agent, person, or company

authorized to accept service on behalf of the firm.

(d) The physical address ~~location~~ of each branch ~~adjusting~~ firm, including its name, valid e-mail address, and telephone number, and the date that the branch firm began transacting insurance business ~~office and the name under which each office conducts or will conduct business~~.

(e) The name of the primary adjuster in full-time charge of the adjusting firm office, including branch firms, and his or her corresponding location.

(f) The fingerprints of each of the following:

1. A sole proprietor, if the applicant is a sole proprietor;

2. Each individual required to be listed in the application under paragraph (a); and

3. Each individual who directs or participates in the management or control of an incorporated firm whose shares are not traded on a securities exchange.

Fingerprints must be taken by a law enforcement agency or other entity approved by the department, must be accompanied by the fingerprint processing fee specified in s. 624.501, and must be processed in accordance with s. 624.34. However, fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

(g) ~~(c)~~ Such ~~Any~~ additional information that the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to

ascertain that such persons meet the requirements of this code. However, the department may not require that credit or character reports be submitted for such persons.

~~(2) An application for an adjusting firm license must be signed by each owner of the firm. If the firm is incorporated, the application must be signed by the president and secretary of the corporation.~~

~~(3) Each application must be accompanied by payment of any applicable fee as prescribed in s. 624.501.~~

~~(4) License fees are not refundable.~~

(3)~~(5)~~ The license of an adjusting firm continues in force until it is canceled, ~~required to be licensed pursuant to s. 626.8695 must remain so licensed for a period of 3 years from the date of licensure, unless the license is~~ suspended, or revoked or until it is otherwise terminated or expires by operation of law. The department may suspend or revoke the adjusting firm's authority to do business for activities occurring during the time the firm is licensed, regardless of whether the licensing period has terminated.

Section 16. Section 626.872, Florida Statutes, is repealed.

Section 17. Subsection (1) of section 626.874, Florida Statutes, is amended to read:

626.874 Catastrophe or emergency adjusters.—

(1) In the event of a catastrophe or emergency, the department may issue a license, for the purposes and under the conditions and for the period of emergency as it shall determine, to persons who are residents or nonresidents of this state, who are at least 18 years of age, who are United States citizens or legal aliens who possess work authorization from the

United States Bureau of Citizenship and Immigration Services, and who are not licensed adjusters under this part but who have been designated and certified to it as qualified to act as adjusters ~~by all-lines resident adjusters,~~ by an authorized insurer~~, or by a licensed general lines agent~~ to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurers, or by the primary adjuster of an independent adjusting firm contracted with an authorized insurer to adjust claims on behalf of the insurer. The fee for the license is as provided in s. 624.501(12)(c).

Section 18. Subsection (2) of section 626.875, Florida Statutes, is amended to read:

626.875 Office and records.—

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 5 ~~3~~ years after completion of the adjustment. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto.

Section 19. Section 626.876, Florida Statutes, is amended to read:

626.876 Exclusive employment; public adjusters, all-lines ~~independent~~ adjusters.—

(1) An individual licensed ~~and appointed~~ as a public adjuster may not be simultaneously licensed as an all-lines adjuster ~~employed during the same period by more than one public adjuster or public adjuster firm or corporation~~.

(2) An individual licensed as an all-lines adjuster and

appointed as an independent adjuster, a company employee adjuster, or a public adjuster apprentice may not be simultaneously appointed, contracted, or employed as an adjuster that requires a different appointment type ~~during the same period by more than one independent adjuster or independent adjuster firm or corporation~~.

Section 20. Section 626.879, Florida Statutes, is repealed.

Section 21. Subsection (5) of section 626.9953, Florida Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—

(5) An applicant must submit a set of his or her fingerprints to the department and pay the processing fee established under s. 624.501(23) ~~s. 624.501(24)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal history records checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 22. This act shall take effect January 1, 2018.

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 922
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Garcia
SUBJECT:	Insurance Adjusters
DATE:	April 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Sanders/Billmeier	Betta	AGG	**Recommend: Fav/CS**
3.	Sanders/Billmeier	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 922 amends various statutes relating to insurance adjusters. The bill eliminates licensure for public adjuster apprentices and requires a public adjuster apprentice to be licensed as an all-lines adjuster and appointed as a public adjuster apprentice.

In addition, the bill:

- Eliminates the temporary license, which is not currently used;
- Revises the requirements for public adjusters to expressly prohibit unlicensed public adjusting that is done directly or indirectly;
- Deletes a provision of law held unconstitutional by the Florida Supreme Court;
- Excludes deductibles from the calculation of an adjuster's fee; and
- Reduces the time a public adjuster apprentice must be supervised before becoming eligible for licensure as a public adjuster.

In addition, the bill makes numerous changes to part VI of ch. 626, F.S., and other statutes applicable to adjusters to improve the efficiency of licensure and enforcement.

The Office of Insurance Regulation does not anticipate any impact to state funds or expenditures.[1]

II. Present Situation:

Insurance Adjusters

Part VI of ch. 626, F.S., regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters. A "public adjuster" is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.[2] An "independent adjuster" is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract. A "company employee adjuster" is any person employed in-house by an insurer who ascertains and determines the amount of an insurance claim, loss, or damage, or settles an insurance claim under an insurance contract.

Public adjusters are licensed by the Department of Financial Services (DFS) and are required to meet pre-licensing requirements, which include submitting an application, paying required fees, complying with requirements as to knowledge, experience, or instruction, and submitting fingerprints.

A policyholder who has sustained an insured loss may hire a public adjuster. The public adjuster will inspect the loss site, analyze the damages, assemble claim support data, review the insured's coverage, determine current replacement costs, and confer with the insurer's representatives to adjust the claim. Public adjuster fees are capped at ten to 20 percent of the insurance claim payments.[3]

Adjusting Firms

Adjusting firms are not required to be licensed by the DFS. If a firm chooses to obtain a license, it lasts for three years and costs $60.[4] An application for licensure must include:

- The name and address of each majority owner, partner, officer, and director of the adjusting firm;
- The name of the adjusting firm and its principal business address; and
- The location of each adjusting firm office and the name under which each office conducts or will conduct business.[5]

[1] Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).
[2] Section 626.854(1), F.S.
[3] Section 626.854 (11), F.S.
[4] Section 624.501, F.S.
[5] Section 626.8696, F.S.

Solicitation by Public Adjusters

In 2008, the Legislature prohibited public adjusters from directly or indirectly through any other person or entity initiating contact or engaging in face-to-face or telephonic solicitation with any insured until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy.[6] In 2012, the Florida Supreme Court held the law violated a public adjuster's right to free speech because the statute regulated commercial speech and was more extensive than necessary to serve the state's interest.[7]

Public Adjuster Apprentices

A "public adjuster apprentice" is any person who:

- Is not a licensed public adjuster;
- Is employed by or has a contract with a licensed and appointed public adjuster or a public adjusting firm to assist a public adjuster in conducting business under the license; and
- Satisfies the licensing and character requirements of s. 626.8651, F.S.

To become licensed, a public adjuster apprentice applicant must be 18 years of age; a U.S. citizen; trustworthy; pay all fees applicable to adjuster licenses; and pass an examination. In addition, an applicant must possess specified certification related to claims adjustment and present to the DFS a bond in the amount of $50,000. A public adjuster apprentice must complete a minimum of 100 hours per month for 12 months under the supervision of a licensed all-lines public adjuster before becoming eligible for licensure as a public adjuster.[8] A public adjuster apprentice license is effective for 18 months unless the license expires due to lack of maintaining an appointment, is surrendered by the licensee, is terminated, suspended or revoked by the DFS, or is cancelled by the DFS upon issuance of a public adjuster license.[9]

Current law allows an appointing public adjusting firm to maintain up to 12 public adjuster apprentices concurrently.[10] A supervising public adjuster may only be responsible for three public adjuster apprentices simultaneously. An apprentice has the same authority as a public adjuster except that an apprentice may not execute contracts for services of a public adjuster except under the direct supervision of a public adjuster.[11]

III. Effect of Proposed Changes:

Adjusting Firms (Section 11)

Section 11 amends s. 626.8695, F.S., to require each business location established by an adjuster to designate a primary adjuster for that location. It also requires adjusting firms and branch locations of the adjusting firms to name primary adjusters. The primary adjuster is responsible for the supervision of the adjusters at that location. The primary adjuster is accountable for

[6] Chapter 2008-220, L.O.F.
[7] *Atwater v. Kortum*, 95 So.2d 85 (Fla. 2012).
[8] Section 626.8651, F.S.
[9] Section 626.8651(8), F.S.
[10] Section 626.8651(7), F.S.
[11] Section 626.8651(11), F.S.

misconduct by those under his or her direct supervision. This section does not render a primary adjuster criminally liable to an act unless the primary adjuster personally committed the act, knew or should have known about the act constituting a violation of this act. Furthermore, this section adds contractor to the language whereby DFS may suspend or revoke the license of any adjuster employed [or contracted] by a person whose license has been suspended or revoked.

An adjusting firm location may not conduct insurance business unless a primary adjuster is designated and provides services to the firm at all times. If a primary adjuster ends his or her affiliation with the firm and the firm does not designate another primary adjuster within 90 days, the firm's license expires on the 91st day.

Any adjusting firm may determine a person's current licensure status by submitting an appointment request to the DFS.

Adjusters (Sections 1, 4, 8, 12, 13, 14, and 15)

Section 1 defines "adjuster" as a public adjuster[12] or an all-lines adjuster.

Section 4 amends s. 626.8548, F.S., and redefines an "all-lines adjuster" as "a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage." This section further directs that an "all-lines adjuster" also includes "any person who, for money, commission, or any other thing of value, directly or indirectly solicits claims on behalf of a public adjuster, but does not include a paid spokesperson used as part of a written or an electronic advertisement or a person who photographs or inventories damaged personal property or business personal property if such person does not otherwise adjust, investigate, or negotiate for or attempt to effect the settlement of a claim."

Section 8 amends s. 626.864, F.S., to provide that an all-lines adjuster may be appointed as an independent adjuster, a public adjuster apprentice, or a company employee adjuster but not more than one concurrently.

Section 12 repeals s. 626.872, F.S., which created temporary licenses for all-lines adjusters.

Section 13 amends s. 626.874, F.S., to clarify that only authorized insurers or adjusting firms contracted with authorized insurers may designate emergency adjusters for temporary licensure by the DFS during a catastrophe.

Section 14 amends s. 626.875, F.S., to require adjusters to maintain records relating to claims for five years instead of the current three years.

Section 15 amends s. 626.876, F.S., to provide that an individual licensed as a public adjuster may not be simultaneously licensed as an all-lines adjuster. It further provides that an individual licensed as an all-lines adjuster and appointed as a company adjuster or a public adjuster

[12] *See* s. 626.854, F.S.

apprentice may not be simultaneously appointed or employed in a different adjuster capacity that would require an additional appointment type.

Public Adjusters (Sections 2 and 9)

Section 2 amends s. 626.854, F.S., to expand the definition of "public adjuster" to include persons who directly or indirectly prepare, complete, or file an insurance claim for an insured. The definition is further expanded to include persons who directly or indirectly solicit or perform specified other duties on behalf of a public adjuster, an insured, or a third-party claimant. It provides that the term does not include a person who photographs or inventories damaged personal property or a person performing duties under another professional license if the person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim. It also removes a limitation that requires a consumer wishing to cancel a public adjuster contract to do so in writing or by phone.

This section repeals the restrictions on public adjuster solicitations within 48 hours after an event that may be the subject of an insurance claim.

The section prohibits public adjusters from charging a fee based on policy deductibles.

The section prohibits a contract provision that allows a public adjuster, public adjuster apprentice, or person acting on behalf of an adjuster or apprentice to choose the person that will perform repair work on a property insurance claim or provide goods or services that will require the insured or third-party claimant to expend funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services.

Furthermore, section 2 creates a new paragraph to more specifically define what a person is prohibited from doing unless the person is a public adjuster or an attorney. A person who is not a public adjuster or attorney may not, for money or commission:

- Prepare, complete, or file an insurance claim for an insured or a third-party claimant;
- Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;
- Advertise for employment as a public adjuster; or
- Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

Section 9 amends s. 626.865, F.S., to require a public adjuster, as part of the qualification and bond process, to be:

- Licensed in Florida as an all-lines adjuster; and
- To have been appointed on a continual basis for the previous six months as:
  - A public service apprentice under s. 626.8561, F.S.;
  - As an independent adjuster under s. 626.855, F.S.; or
  - As a company employee adjuster under s. 626.856, F.S.

Current law requires a public adjuster apprentice to serve as a public adjuster apprentice for one year before becoming a public adjuster. This section reduces the time to six months.

Public Adjuster Apprentices (Sections 3, 5 and 10)

Section 3 repeals s. 626.8541, F.S., which is the current law creating the license for public adjuster apprentices.

Section 5 creates s. 626.8561, F.S., to define a "public adjuster apprentice" as a person licensed as an all-lines adjuster who is appointed and employed by a public adjuster or public adjusting firm. The apprentice assists the public adjuster in determining the amount of any claim, loss or damage payable under an insurance contract.

Section 10 amends s. 626.8651, F.S., to provide the DFS will issue an appointment as a public adjuster apprentice to licensee who:

- Is licensed as an all-lines adjuster;
- Has filed with the DFS a bond[13] executed and issued by a surety insurer in the amount of $50,000, which is conditioned upon the faithful performance of duties as a public adjuster apprentice; and
- Maintains such bond unimpaired throughout the existence of the appointment and for at least one year after termination of the appointment.

This section provides that an appointing public adjusting firm may maintain no more than four public adjuster apprentices and that a supervising public adjuster may supervise no more than one apprentice at a time.

This section removes the limitation on solicitation of contracts by public adjuster apprentices.

Miscellaneous Provisions (Sections 6, 7, 16 and 17)

Section 6 amends s. 626.8584, F.S., to add a public adjuster or a public adjusting firm to the list of persons or entities who can appoint, employ or contract with a nonresident all-lines adjuster.

Under current law, a "nonresident all-lines adjuster" means a person who is:

- Not a resident of Florida;
- Currently licensed as an adjuster in his or her state of residence for all lines of insurance except life and annuities or, if a resident of a state that does not license such adjusters, meets the qualifications prescribed in s. 626.8734, F.S.; and
- Licensed as an all-lines adjuster and self-appointed or appointed and employed by an independent adjusting firm or other independent adjuster, by an insurer admitted to do business in this state or wholly owned subsidiary of an insurer admitted to do business in this state, or by other insurers under the common control or ownership of such insurer.[14]

This section removes the language, "other insurers under the common control or ownership of such insurer."

[13] The bond must be executed in favor of the DFS and must authorize recovery of the damages sustained if the licensee commits fraud or unfair practices. The aggregate liability of the surety may not exceed the amount of the bond and the bond may not be terminated without giving notice to the licensee and the DFS.
[14] Section 626.8584, F.S.

Section 7 amends s. 626.861, F.S., to provide that an employee of an insurer handling claims with respect to residential property insurance can adjust such claims if the coverage does not exceed $500.

Section 16 repeals s. 626.879, F.S., which allows the DFS to have a pool of adjusters in case of declarations of emergency. The DFS has not used the pool in a number of years and does not believe the statute is necessary.

Section 17 provides an effective date of 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:

The impact to the private sector is indeterminate. However, the Office of Insurance Regulation indicates "tightening the licensing requirements of public adjusters may result in improved insurer loss trends."[15]

C. Government Sector Impact:

The Office of Insurance Regulation does not anticipate any impact to state funds or expenditures.[16]

VI. Technical Deficiencies:

None.

[15] Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).
[16] Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.015, 626.854, 626.8541, 626.8548, 626.8561, 626.8584, 626.861, 626.864, 626.865, 626.8651, 626.8695, 626.874, 626.875, and 626.876.

This bill repeals the following sections of the Florida Statutes: 626.872 and 626.879.

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 25, 2017:
The committee substitute removes provisions of the bill requiring adjusting firms to obtain a license from the DFS and amends definitions of "public adjuster" and "all-lines adjuster" to exclude persons who photograph or inventory damaged property or persons performing duties under another professional license as long as the person does not otherwise act as an adjuster.

CS by Banking and Insurance on April 3, 2017:
- Creates a minimum $2,500 penalty if a firm is required to be licensed but does not apply for a license;
- Removes a requirement that adjuster websites contain certain disclosures;
- Clarifies that paid spokespersons are exempt from licensure when promoting services; and
- Makes technical changes.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Garcia

597-03359-17 2017922c1

A bill to be entitled

An act relating to insurance adjusters; amending s. 624.501, F.S.; deleting a fee for an original or renewal license for an adjusting firm; amending s. 626.015, F.S.; conforming a cross-reference; amending s. 626.022, F.S.; revising applicability of the Licensing Procedures Law to include adjusting firms; amending s. 626.112, F.S.; prohibiting certain entities from acting as insurance adjusting firms without specified licenses; providing an exemption; providing construction; specifying that an unlicensed firm is subject to a certain administrative penalty; deleting a requirement for the Department of Financial Services to automatically convert a certain registration to an insurance agency license as of a certain date; amending s. 626.854, F.S.; redefining the term "public adjuster"; deleting a certain prohibited act of a public adjuster; deleting a provision specifying the method for an insured or claimant to provide certain notice to an insurer; providing construction relating to certain limitations on insurance claim payments and public adjuster compensation; revising a prohibition against certain entities relating to a contract or power of attorney that vests certain authority in a property insurance claim; conforming a cross-reference; prohibiting persons from conducting certain activities relating to insurance claims; providing an exception for attorneys and public adjusters; repealing s. 626.8541, F.S.,

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relating to public adjuster apprentices; amending s. 626.8548, F.S.; redefining the term "all-lines adjuster"; creating s. 626.8561, F.S.; defining the term "public adjuster apprentice"; amending s. 626.8584, F.S.; redefining the term "nonresident all-lines adjuster"; amending s. 626.861, F.S.; revising construction relating to employees of an insurer; amending s. 626.864, F.S.; revising the permissible appointments of all-lines adjusters; amending s. 626.865, F.S.; revising the qualifications for licensure for public adjusters; amending s. 626.8651, F.S.; requiring public adjuster apprentices to be appointed, rather than licensed, by the department; specifying qualifications for such appointments; revising requirements and limitations for public adjusting firms and public adjusters who supervise public adjuster apprentices; revising certain prohibited acts and exceptions to such acts of public adjuster apprentices; conforming provisions to changes made by the act; amending s. 626.8695, F.S.; revising requirements for designating primary adjusters; redefining the term "primary adjuster"; revising the accountability of a primary adjuster for persons under his or her supervision; revising a prohibition against an adjusting firm location conducting insurance business under certain circumstances; revising procedures for an adjusting firm to determine a person's current licensure status; amending s. 626.8696, F.S.; revising conditions for the issuance

of an adjusting firm license; revising application requirements for such license; providing rulemaking authority of the department; prohibiting the department from requiring certain information on an application; providing for expiration of such license; repealing s. 626.872, F.S., relating to all-lines adjuster temporary licenses; amending s. 626.874, F.S.; revising conditions for the department to issue adjuster licenses in the event of catastrophes or emergencies; amending s. 626.875, F.S.; revising the minimum time period in a records retention requirement for adjusters; amending s. 626.876, F.S.; revising certain prohibitions relating to exclusive employment of public adjusters and all-lines adjusters and appointed independent adjusters; repealing s. 626.879, F.S., relating to pools of insurance adjusters; amending s. 626.9953, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (20) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

~~(20) Adjusting firm, original or renewal 3-year license~~

~~$60.00~~

Section 2. Subsection (1) of section 626.015, Florida Statutes, is amended to read:

626.015 Definitions.—As used in this part:

(1) "Adjuster" means a public adjuster as defined in s. 626.854~~, a public adjuster apprentice as defined in s. 626.8541,~~ or an all-lines adjuster as defined in s. 626.8548.

Section 3. Subsection (1) of section 626.022, Florida Statutes, is amended to read:

626.022 Scope of part.—

(1) This part applies as to insurance agents, service representatives, adjusters, adjusting firms, and insurance agencies; as to any and all kinds of insurance; and as to stock insurers, mutual insurers, reciprocal insurers, and all other types of insurers, except that:

(a) It does not apply as to reinsurance, except that ss. 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss. 626.291-626.301, s. 626.331, ss. 626.342-626.521, ss. 626.541-626.591, and ss. 626.601-626.711 shall apply as to reinsurance intermediaries as defined in s. 626.7492.

(b) The applicability of this chapter as to fraternal benefit societies shall be as provided in chapter 632.

(c) It does not apply to a bail bond agent, as defined in s. 648.25, except as provided in chapter 648 or chapter 903.

(d) This part does not apply to a certified public accountant licensed under chapter 473 who is acting within the scope of the practice of public accounting, as defined in s. 473.302, provided that the activities of the certified public accountant are limited to advising a client of the necessity of

obtaining insurance, the amount of insurance needed, or the line of coverage needed, and provided that the certified public accountant does not directly or indirectly receive or share in any commission or referral fee.

Section 4. Subsection (7) of section 626.112, Florida Statutes, is amended to read:

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, adjusting firms, service representatives, managing general agents.—

(7)(a) An individual, firm, partnership, corporation, association, or other entity may ~~shall~~ not act in its own name or under a trade name, directly or indirectly, as an insurance agency unless it complies with s. 626.172 with respect to possessing an insurance agency license for each place of business at which it engages in an activity that may be performed only by a licensed insurance agent. However, an insurance agency that is owned and operated by a single licensed agent conducting business in his or her individual name and not employing or otherwise using the services of or appointing other licensees is ~~shall be~~ exempt from the agency licensing requirements of this subsection.

(b) A branch place of business that is established by a licensed agency is considered a branch agency and is not required to be licensed so long as it transacts business under the same name and federal tax identification number as the licensed agency and has designated with the department a licensed agent in charge of the branch location as required by s. 626.0428 and the address and telephone number of the branch location have been submitted to the department for inclusion in

the licensing record of the licensed agency within 30 days after insurance transactions begin at the branch location.

(c) An individual, a firm, a partnership, a corporation, an association, or any other entity may not act in its own name or under a trade name, directly or indirectly, as an adjusting firm unless it possesses an adjusting firm license under s. 626.8696 for each place of business at which it engages in an activity that may be performed only by a licensed adjuster. However, an insurance company authorized to transact insurance in this state which directly appoints adjusters, or an adjusting firm that is owned and operated by a single licensed adjuster who is conducting business in his or her individual name and who is not employing or otherwise using the services of or appointing other licensees, is exempt from the adjusting firm licensing requirements of this subsection.

(d) A branch place of business that is established by a licensed adjusting firm is considered a branch firm and is not required to be licensed so long as:

1. It transacts business under the same name and federal tax identification number as the licensed adjusting firm;

2. It has designated with the department a licensed primary adjuster in charge of the branch firm as required by s. 626.8695; and

3. Within 30 days after insurance transactions begin at the branch firm, the address and telephone number of the branch firm are submitted to the department for inclusion in the licensing record of the licensed adjusting firm.

(e)~~(c)~~ If an agency or firm is required to be licensed but fails to file an application for licensure in accordance with

this section, the department must ~~shall~~ impose on the agency or firm an administrative penalty of up to $2,500 for a first violation and up to $10,000 for any subsequent violation.

~~(d) Effective October 1, 2015, the department must automatically convert the registration of an approved registered insurance agency to an insurance agency license.~~

Section 5. Present subsections (7) through (19) of section 626.854, Florida Statutes, are renumbered as subsections (6) through (18), respectively, subsection (1) and present subsections (6), (7), (11), (18), and (19) are amended, and a new subsection (19) is added to that section, to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(1) A "public adjuster" is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim ~~form~~ for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant, unless such person is performing duties

under another professional license.

~~(6) A public adjuster may not directly or indirectly through any other person or entity initiate contact or engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.~~

(6) ~~(7)~~ An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 3 business days after the date on which the contract is executed or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, ~~by phone or in writing,~~ whichever is later. The public adjuster's contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster's contract.

(10)(a) ~~(11)(a)~~ If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or

accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance claim payments made by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

(c) Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

(d) ~~(c)~~ Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded

is a violation of this chapter punishable as provided under s. 626.8698.

(17) ~~(18)~~ A public adjuster, a public adjuster apprentice, or a person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the effective authority to choose the persons or entities that will perform salvage, repair, or any other work in a property insurance claim.

(18) ~~(19)~~ Subsections (5)-(17) ~~(5)-(18)~~ apply only to residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

(19) Except as otherwise provided in this chapter, no person, except an attorney at law or a public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Advertise for employment as a public adjuster; or

(d) Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

Section 6. Section 626.8541, Florida Statutes, is repealed.

Section 7. Section 626.8548, Florida Statutes, is amended to read:

626.8548 "All-lines adjuster" defined.—An "all-lines

adjuster" is a person who, for money, commission, or any other thing of value, directly or indirectly ~~is self-employed or employed by an insurer, a wholly owned subsidiary of an insurer, or an independent adjusting firm or other independent adjuster, and who~~ undertakes on behalf of a public adjuster or an insurer ~~or other insurers under common control or ownership~~ to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits claims on behalf of a public adjuster, but does not include paid spokespersons used as part of a written or an electronic advertisement. The term does not apply to life insurance or annuity contracts.

Section 8. Section 626.8561, Florida Statutes, is created to read:

626.8561 "Public adjuster apprentice" defined.—The term "public adjuster apprentice" means a person licensed as an all-lines adjuster who:

(1) Is appointed and employed or contracted by a public adjuster or a public adjusting firm;

(2) Assists the public adjuster or public adjusting firm in ascertaining and determining the amount of any claim, loss, or damage payable under an insurance contract, or who undertakes to effect settlement of such claim, loss, or damage; and

(3) Satisfies the requirements of s. 626.8651.

Section 9. Subsection (3) of section 626.8584, Florida Statutes, is amended to read:

626.8584 "Nonresident all-lines adjuster" defined.—A

"nonresident all-lines adjuster" means a person who:

(3) Is licensed as an all-lines adjuster and self-appointed or appointed and employed or contracted by an independent adjusting firm or other independent adjuster, by an insurer admitted to do business in this state or a wholly owned subsidiary of an insurer admitted to do business in this state, or by a public adjuster or a public adjusting firm ~~other insurers under the common control or ownership of such insurer~~.

Section 10. Subsection (1) of section 626.861, Florida Statutes, is amended to read:

626.861 Insurer's officers, insurer's employees, reciprocal insurer's representatives; adjustments by.—

(1) ~~Nothing in~~ This part may not ~~shall~~ be construed to prevent an executive officer of any insurer, an ~~or a regularly salaried~~ employee of an insurer handling claims with respect to health insurance, an employee of an insurer handling claims with respect to residential property insurance in which the amount of coverage for the applicable type of loss is contractually limited to $500 or less, or the duly designated attorney or agent authorized and acting for subscribers to reciprocal insurers~~,~~ from adjusting any claim loss or damage under any insurance contract of such insurer.

Section 11. Subsection (3) of section 626.864, Florida Statutes, is amended to read:

626.864 Adjuster license types.—

(3) An all-lines adjuster may be appointed as an independent adjuster, public adjuster apprentice, or company employee adjuster, but not more than one of these ~~both~~ concurrently.

Section 12. Paragraphs (d) and (e) of subsection (1) of section 626.865, Florida Statutes, are amended to read:

626.865 Public adjuster's qualifications, bond.—

(1) The department shall issue a license to an applicant for a public adjuster's license upon determining that the applicant has paid the applicable fees specified in s. 624.501 and possesses the following qualifications:

(d) Has had sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts, other than life and annuity contracts, is sufficiently informed as to the terms and effects of the provisions of those types of insurance contracts, and possesses adequate knowledge of the laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom the applicant may have business as a public adjuster~~, or has been licensed and employed as a resident insurance company adjuster or independent adjuster in this state on a continual basis for the past year~~.

(e) Has been licensed in this state as an all-lines adjuster, and has been appointed on a continual basis for the previous 6 months ~~Is licensed~~ as a public adjuster apprentice under s. 626.8561, as an independent adjuster under s. 626.855, or as a company employee adjuster under s. 626.856 ~~under s. 626.8651 and complies with the requirements of that license throughout the licensure period~~.

Section 13. Section 626.8651, Florida Statutes, is amended to read:

626.8651 Public adjuster apprentice appointment ~~license~~;

qualifications.—

(1)(a) The department shall issue an appointment ~~a license~~ as a public adjuster apprentice to a licensee ~~an applicant~~ who ~~is~~:

1. Is licensed as an all-lines adjuster under s. 626.866;

2. Has filed with the department a bond executed and issued by a surety insurer that is authorized to transact such business in this state in the amount of $50,000, which is conditioned upon the faithful performance of his or her duties as a public adjuster apprentice; and

3. Maintains such bond unimpaired throughout the existence of the appointment and for at least 1 year after termination of the appointment.

(b) The bond must be in favor of the department and must specifically authorize recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.

~~(a) A natural person at least 18 years of age.~~

~~(b) A United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services.~~

~~(c) Trustworthy and has such business reputation as would reasonably ensure that the applicant will conduct business as a public adjuster apprentice fairly and in good faith and without~~

~~detriment to the public.~~

~~(2) All applicable license fees, as prescribed in s. 624.501, must be paid in full before issuance of the license.~~

~~(3) An applicant must pass the required written examination before a license may be issued.~~

~~(4) An applicant must have received designation as an Accredited Claims Adjuster (ACA), as a Certified Adjuster (CA), or as a Certified Claims Adjuster (CCA) after completion of training that qualifies the applicant to engage in the business of a public adjuster apprentice fairly and without injury to the public. Such training and instruction must address adjusting damages and losses under insurance contracts, the terms and effects of insurance contracts, and knowledge of the laws of this state relating to insurance contracts.~~

~~(5) At the time of application for license as a public adjuster apprentice, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state in the amount of $50,000, conditioned upon the faithful performance of his or her duties as a public adjuster apprentice under the license for which the applicant has applied, and thereafter maintain the bond unimpaired throughout the existence of the license and for at least 1 year after termination of the license. The bond shall be in favor of the department and shall specifically authorize recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be~~

~~terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.~~

~~(6) A public adjuster apprentice shall complete at a minimum 100 hours of employment per month for 12 months of employment under the supervision of a licensed and appointed all-lines public adjuster in order to qualify for licensure as a public adjuster. The department may adopt rules that establish standards for such employment requirements.~~

(2)~~(7)~~ An appointing public adjusting firm may not maintain more than four ~~12~~ public adjuster apprentices simultaneously. However, a supervising public adjuster may not be responsible for more than one ~~three~~ public adjuster apprentice ~~apprentices~~ simultaneously and shall be accountable for the acts of the ~~all~~ public adjuster apprentice ~~apprentices~~ which are related to transacting business as a public adjuster apprentice. This subsection does not apply to a public adjusting firm that adjusts claims primarily for commercial entities with operations in more than one state and that does not directly or indirectly perform adjusting services for insurers or individual homeowners.

~~(8) An apprentice license is effective for 18 months unless the license expires due to lack of maintaining an appointment; is surrendered by the licensee; is terminated, suspended, or revoked by the department; or is canceled by the department upon issuance of a public adjuster license. The department may not issue a public adjuster apprentice license to any individual who has held such a license in this state within 2 years after expiration, surrender, termination, revocation, or cancellation~~

~~of the license.~~

~~(9) After completing the requirements for employment as a public adjuster apprentice, the licensee may file an application for a public adjuster license. The applicant and supervising public adjuster or public adjusting firm must each file a sworn affidavit, on a form prescribed by the department, verifying that the employment of the public adjuster apprentice meets the requirements of this section.~~

~~(10) In no event shall A public adjuster apprentice licensed under this section perform any of the functions for which a public adjuster's license is required after expiration of the public adjuster apprentice license without having obtained a public adjuster license.~~

(3) ~~(11)~~ A public adjuster apprentice has the same authority as the licensed public adjuster or public adjusting firm that employs the apprentice except that an apprentice may not execute contracts for the services of a public adjuster or public adjusting firm ~~and may not solicit contracts for the services except under the direct supervision and guidance of the supervisory public adjuster~~. An individual may not be, act as, or hold himself or herself out to be a public adjuster apprentice unless the individual is licensed as an all-lines adjuster and holds a current appointment by a licensed public all-lines adjuster or a public adjusting firm that employs a licensed ~~all-lines~~ public adjuster.

Section 14. Section 626.8695, Florida Statutes, is amended to read:

626.8695 Primary adjuster.—

(1) Each business location established by an adjuster,

~~person operating~~ an adjusting firm, a corporation, or an association ~~and each location of a multiple location adjusting firm~~ must designate with the department a primary adjuster who is licensed and appointed to adjust the insurance claims adjusted by the business location.

(2) An adjusting firm and each of its branch firms shall designate a primary adjuster ~~for each such firm or location~~ and ~~must~~ file with the department, at the department's designated website, the name and license number of such primary adjuster and the physical address of the adjusting firm or branch firm location where he or she is the primary adjuster~~, on a form approved by the department~~. The designation of the primary adjuster may be changed at the option of the adjusting firm. Any such change is effective upon notification to the department. Notice of change must be provided ~~sent~~ to the department within 30 days after such change.

(3) ~~(2)(a)~~ For purposes of this section, a "primary adjuster" is the licensed adjuster who is responsible for the ~~hiring and~~ supervision of all individuals within an adjusting firm location who act ~~deal with the public and who acts~~ in the capacity of ~~a public adjuster as defined in s. 626.854, or~~ an ~~independent~~ adjuster as defined in this chapter ~~s. 626.855~~. An adjuster may be designated as a primary adjuster for more than ~~only~~ one adjusting firm location provided no person engages in activity requiring licensure as an adjuster at any location when an adjuster is not physically present.

(4) ~~(b)~~ For purposes of this section, an "adjusting firm" is a location where an independent or public adjuster is engaged in the business of insurance.

(5) ~~(3)~~ The department may suspend or revoke the license of the primary adjuster if the adjusting firm employs or contracts any person who has had a license denied or any person whose license is currently suspended or revoked. However, if a person has been denied a license for failure to pass a required examination, he or she may be employed or contracted to perform clerical or administrative functions for which licensure is not required.

(6) ~~(4)~~ The primary adjuster in an ~~unincorporated~~ adjusting firm~~, or the primary adjuster in an incorporated adjusting firm in which no officer, director, or stockholder is an adjuster,~~ is ~~responsible and~~ accountable for misconduct or violations of this code committed by the primary adjuster or by any other person ~~the acts of salaried employees~~ under his or her direct supervision ~~and control~~ while acting on behalf of the adjusting firm. This section does not render a primary adjuster ~~Nothing in this section renders any person~~ criminally liable for an ~~or subject to any disciplinary proceedings for any~~ act unless the primary adjuster ~~person~~ personally committed the act or knew or should have known of the act and of the facts constituting a violation of this code.

(7) ~~(5)~~ The department may suspend or revoke the license of any adjuster who is employed or contracted by a person whose license is currently suspended or revoked.

(8) ~~(6)~~ An adjusting firm location may not conduct the business of insurance unless a primary adjuster is designated and provides services to the firm at all times. If the ~~Failure of the person operating the adjusting firm to designate a~~ primary adjuster designated with the department ends his or her

affiliation with the firm for any reason and if the firm fails to designate another primary adjuster, as required in subsection (2), within 90 days, the firm license automatically expires on the 91st day after the date the designated primary adjuster ended his or her affiliation with ~~for~~ the firm~~, or for each location, as applicable, on a form prescribed by the department within 30 days after inception of the firm or change of primary adjuster designation, constitutes grounds for requiring the adjusting firm to obtain an adjusting firm license pursuant to s. 626.8696~~.

(9) ~~(7)~~ Any adjusting firm may determine a ~~request, on a form prescribed by the department, verification from the department of any~~ person's current licensure status by submitting an appointment request~~. If a request is mailed to the office~~ within 5 working days after the date an adjuster is hired. If~~, and~~ the department subsequently notifies the adjusting firm that its appointee's ~~an employee's~~ license is currently suspended, revoked, or has been denied, the license of the primary adjuster may ~~shall~~ not be revoked or suspended if the unlicensed person is immediately dismissed from employment as an adjuster with the firm.

Section 15. Section 626.8696, Florida Statutes, is amended to read:

626.8696 Application for adjusting firm license.—

(1) The department may issue an adjusting firm license to a person only after the person files a written application with the department and qualifies for such license.

(2) An application for an adjusting firm license must be signed by an individual required to be listed in the application

under paragraph (a). An adjusting firm may authorize a third party to complete, submit, and sign an application on the firm's behalf. However, the firm must ensure that the information on the application is true and correct, and the firm is accountable for any misstatement or misrepresentation. The application for an adjusting firm license must include:

(a) The name of each majority owner, partner, officer, ~~and~~ director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management or control of the adjusting firm.

(b) The resident address of each person required to be listed in the application under paragraph (a).

(c) The name, ~~of the adjusting firm and its~~ principal business street address, and valid e-mail address of the adjusting firm, and the name, street address, and valid e-mail address of the firm's registered agent, person, or company authorized to accept service on behalf of the firm.

(d) The physical address ~~location~~ of each branch ~~adjusting~~ firm, including its name, valid e-mail address, and telephone number, and the date that the branch firm began transacting insurance business ~~office and the name under which each office conducts or will conduct business~~.

(e) The name of the primary adjuster in full-time charge of the adjusting firm office, including branch firms, and his or her corresponding location.

(f) The fingerprints of each of the following:

1. A sole proprietor, if the applicant is a sole proprietor;

2. Each individual required to be listed in the application

under paragraph (a); and

3. Each individual who directs or participates in the management or control of an incorporated firm whose shares are not traded on a securities exchange.

Fingerprints must be taken by a law enforcement agency or other entity approved by the department, must be accompanied by the fingerprint processing fee specified in s. 624.501, and must be processed in accordance with s. 624.34. However, fingerprints need not be filed for an individual who is currently licensed and appointed under this chapter. This paragraph does not apply to corporations whose voting shares are traded on a securities exchange.

(g) ~~(c)~~ Such ~~Any~~ additional information that the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code. However, the department may not require that credit or character reports be submitted for such persons.

~~(2) An application for an adjusting firm license must be signed by each owner of the firm. If the firm is incorporated, the application must be signed by the president and secretary of the corporation.~~

~~(3) Each application must be accompanied by payment of any applicable fee as prescribed in s. 624.501.~~

~~(4) License fees are not refundable.~~

(3) ~~(5)~~ The license of an adjusting firm continues in force until it is canceled, ~~required to be licensed pursuant to s. 626.8695 must remain so licensed for a period of 3 years from~~

~~the date of licensure, unless the license is~~ suspended, or revoked or until it is otherwise terminated or expires by operation of law. The department may suspend or revoke the adjusting firm's authority to do business for activities occurring during the time the firm is licensed, regardless of whether the licensing period has terminated.

Section 16. Section 626.872, Florida Statutes, is repealed.

Section 17. Subsection (1) of section 626.874, Florida Statutes, is amended to read:

626.874 Catastrophe or emergency adjusters.—

(1) In the event of a catastrophe or emergency, the department may issue a license, for the purposes and under the conditions and for the period of emergency as it shall determine, to persons who are residents or nonresidents of this state, who are at least 18 years of age, who are United States citizens or legal aliens who possess work authorization from the United States Bureau of Citizenship and Immigration Services, and who are not licensed adjusters under this part but who have been designated and certified to it as qualified to act as adjusters ~~by all-lines resident adjusters,~~ by an authorized insurer~~, or by a licensed general lines agent~~ to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurers, or by the primary adjuster of an independent adjusting firm contracted with an authorized insurer to adjust claims on behalf of the insurer. The fee for the license is as provided in s. 624.501(12)(c).

Section 18. Subsection (2) of section 626.875, Florida Statutes, is amended to read:

626.875 Office and records.—

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 5 ~~3~~ years after completion of the adjustment. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto.

Section 19. Section 626.876, Florida Statutes, is amended to read:

626.876 Exclusive employment; public adjusters, all-lines ~~independent~~ adjusters.—

(1) An individual licensed ~~and appointed~~ as a public adjuster may not be simultaneously licensed as an all-lines adjuster ~~employed during the same period by more than one public adjuster or public adjuster firm or corporation~~.

(2) An individual licensed as an all-lines adjuster and appointed as an independent adjuster, a company employee adjuster, or a public adjuster apprentice may not be simultaneously appointed, contracted, or employed as an adjuster that requires a different appointment type ~~during the same period by more than one independent adjuster or independent adjuster firm or corporation~~.

Section 20. Section 626.879, Florida Statutes, is repealed.

Section 21. Subsection (5) of section 626.9953, Florida Statutes, is amended to read:

626.9953 Qualifications for registration; application required.—

(5) An applicant must submit a set of his or her fingerprints to the department and pay the processing fee

established under s. 624.501(23) ~~s. 624.501(24)~~. The department shall submit the applicant's fingerprints to the Department of Law Enforcement for processing state criminal history records checks and local criminal records checks through local law enforcement agencies and for forwarding to the Federal Bureau of Investigation for national criminal history records checks. The fingerprints shall be taken by a law enforcement agency, a designated examination center, or another department-approved entity. The department may not approve an application for registration as a navigator if fingerprints have not been submitted.

Section 22. This act shall take effect January 1, 2018.

Please reply to:

☐ **District Office:**

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

The Florida Senate

State Senator René García
36th District

April 19th, 2017

The Honorable Jack Latvala
Chairman, Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latvala,

Please have this letter serve as my formal request to have **SB 922: Insurance Adjusters** be heard during the next scheduled Appropriations Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

State Senator René García
District 36

CC: Mike Hansen
Alicia Weiss

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

SB 922
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 922

Name Elizabeth Boyd

Job Title Legisbative Affairs Director

Address 400 N. Monroe St
Street

Tallahassee FL 32399
City *State* *Zip*

Phone 850-413-2863

Email elizabeth.boyd@myfloridacfo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Dept. of Financial Services

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 1044
INTRODUCER:	Appropriations Committee; Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Garcia and others
SUBJECT:	Child Welfare
DATE:	April 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.	Brown	Cibula	JU	**Fav/CS**
3.	Sneed	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1044 makes a number of revisions to current law relating to the care of children in the child welfare system. Many of these changes are recommended by the Department of Children and Families (department) and seek to better ensure child safety.

The specific changes in the bill:

- Require the department to identify the father earlier in the legal process to allow for more placement options and family involvement for a child removed by the department.
- Allow the department to return an abused or neglected child to his or her home with an in-home safety plan when the conditions that caused the child to be removed are resolved, rather than when the parents have substantially completed their case plan.
- Require the appropriate community-based care lead agency or subcontracted agency to establish a multi-disciplinary team to determine appropriate placement of a child after gathering customized data and information on the child.
- Require the department to collect and post on its website data on out-of-home placements and update the website twice a year.
- Require the department to consider the safety of any new children added to the home of a family after a child abuse investigation has begun.
- Require a parent to be assessed for substance abuse and complete treatment when there is evidence of harm to a child as a result of substance abuse.

- Allow the department to terminate parental rights when a child has been placed in out-of-home care in any jurisdiction three or more times.
- Prohibit payments under the Relative Caregiver Program when the parent is living with the relative along with the child.
- Allow the release of medical records by hospitals and physicians in child abuse cases.
- Authorize the department to release confidential child abuse records to screen employees at residential homes.
- Allow certain children services councils, as independent special districts having taxing authority, to remain in existence without additional voter approval in 2020 if they were reapproved for a second time since 2005.
- Prohibit the use of state-appropriated funds to pay the salary of a community-based care lead agency administrative employee in an amount that exceeds the salary paid to the secretary of the department.

The bill addresses placement, treatment, and services for substance-exposed newborns and their families to:

- Require the department and community-based lead care agencies to establish a safe-care plan and develop and implement a coordinated approach to offering treatment and services to substance-abused newborns and their families.
- Require child protective investigators and case managers to receive specialized training prior to accepting cases of substance-abused newborns.
- Establish in the Fourth Judicial Circuit the shared family care residential services pilot program to facilitate the temporary placement of substance-exposed newborns and their families in the home of trained volunteer families for the purpose of mentoring and receiving treatment and services.

The bill also addresses self-care and life needs of unaccompanied homeless youth. These changes:

- Allow certified unaccompanied homeless youth to apply for identification cards with the Department of Highway Safety and Motor Vehicles which provide that they have been certified by an authorized entity;
- Clarify eligibility for tuition exemptions for unaccompanied and homeless youth; and
- Clarify current law allowing unaccompanied homeless youth to obtain medical care without parental permission.

The following components of this bill are expected to have the following fiscal impacts to the department or community-based care lead agency:

- Requires the department to conduct abuse registry checks for residential group care employees. It is expected that this additional workload can be absorbed by existing staff.
- Requires the community-based care lead agencies (CBCs) to develop and use a full placement assessment on every child who enters out-of-home care. It is unknown whether the additional workload can be absorbed with existing CBC resources.[1]

[1] Department of Children and Families, *2017 Agency Legislative Bill Analysis* (March 2, 2017)(on file with the Senate Judiciary Committee).

- Requires the department to collect data from each community-based care lead agency and post it on the department's website, and update the information twice a year.
- Requires the department to develop screening and assessment tools for the treatment and services for substance-exposed newborns. The cost is expected to be absorbed within existing department resources.
- Requires child protective investigators and case managers to receive specialized training prior to working with substance-exposed newborns. The cost is expected to be absorbed within existing department resources.
- Requires the department to contract with the designated community-based care lead agency or a private entity to develop a pilot program in the Fourth Judicial Circuit for the shared family care residential services program.
- The bill has the following fiscal impact on state government:
  - Additional costs for the department to implement the shared family care residential services pilot program in the Fourth Judicial Circuit to serve substance-exposed newborns and their families. The bill provides a nonrecurring appropriation of $250,000 from the General Revenue Fund for Fiscal Year 2017-2018 for the department to implement the pilot program. The pilot program will provide residential treatment and individual wrap-around services to participating families.
  - A reduction in costs incurred by the community-based care lead agencies for paternity tests to the extent the court assesses those costs against the parent, which may reduce the cost to the lead agencies by potentially $131,000 to $1,310,000 annually.

The bill takes effect July 1, 2017, except for the provisions in Section 13 relating to the removal of a child from a home and placement in out-of-home care, and Section 27 relating to screening and assessment instruments, multidisciplinary staffings, and child protective investigator and case manager training to serve substance-exposed newborns and their families, which take effect January 1, 2018.

II. Present Situation:

Paternity in Dependency Cases

Although the term "legal father" is not defined in the Florida Statutes, current law provides that a man is the parent of a child if:

- The child was conceived or born while the man was married to the mother;
- The man has legally adopted the child;
- A court has determined the man to be the child's father;
- The man has signed an affidavit of paternity or he is listed on the child's birth certificate; or
- The man is the unmarried biological father who has acknowledged in writing that he is the father of the child and has complied with other requirements set forth in s. 63.062(2), F.S.[2]

The legal father is included as a party to the case in a dependency proceeding.[3] As such:

[2] *See* also ss. 39.01(49), 63.032(12), and 985.03(38) F.S.
[3] Section 39.01(51), F.S.

- Both parents must be advised of their right to counsel at each stage of the dependency proceeding;[4]
- The department must obtain the names of all parents and prospective parents when they take custody of a child;[5]
- All parents are provided written notice of their right to counsel and right to be heard and present evidence at the shelter hearing;[6]
- All parents are notified of every proceeding or hearing involving the child;[7]
- The court makes its own inquiry to discover the parent's identity when a dependency petition is filed and the identity of a parent is unknown;[8] and
- The department conducts a diligent search to determine the parent's location when the identity of a parent is known, but his or her whereabouts are unknown.[9]

Therefore, determining the identity of a child's father as early in the process as possible is essential in a dependency proceeding.

Conditions for Return and Predisposition Studies

The Legislature has declared that time is of the essence for establishing permanency for a child in the dependency system[10] and that reunification of a child with his or her parent or legal guardian is the first preference of the available permanency goals.[11] When safe to do so, reunification should occur as timely as possible to help promote, foster, and maintain child-parent attachments. Currently, the determinant for the court to address reunification with a parent and a child's return home is a parent's substantial compliance with his or her case plan. Additionally, current law requires the court to consider prevention or reunification efforts of the department and whether the reasons for removal have been remedied.[12]

The department has determined that a more reliable and time sensitive standard for determining when a child can safely return home encompasses DCF demonstrating to the court that the conditions that existed in the home which necessitated the child's placement out of home have changed and that an in-home safety plan will enable a better response to any danger or risks in the home.[13]

Conditions for return are the specific circumstances that must change prior to the child's return home when there is an out-of-home safety plan in response to impending danger. The conditions for return describe what must exist or be different with respect to specific family circumstances,

[4] Section 39.013(9), F.S.
[5] Section 39.401(4), F.S.
[6] Section 39.402(5), F.S.
[7] Section 39.502(1), F.S.
[8] Section 39.503(1), F.S.
[9] Section 39.503(5), F.S.
[10] Section 39.0136(1), F.S.
[11] Section 39.621(1) and (2), F.S.
[12] Section 39.521(1), F.S.
[13] Department of Children and Families, *2017 Agency Legislative Bill Analysis*, pg. 4 (March 2, 2017) (on file with the Senate Judiciary Committee).

home environment, caregiver perception, behavior, capacity, and/or safety service resources that will allow for reunification to occur with the use of an in-home safety plan.[14]

Current practice also replaces substantial compliance with the case plan as the determining factors in a child's return home at disposition and other subsequent court hearings, with conditions for return and an in-depth review of the in-home safety plan. Current practice also replaces the predisposition study used to provide the court with a family functioning assessment, which focuses more narrowly and specifically on danger threats and information related to the determination of child safety.[15]

Children in Households having an Active Investigation or Ongoing Services

The department's current policy related to a child who is born into or a child who has moved into a household having an active investigation or ongoing services requires the child protective investigator or case manager to add the child to the child welfare case as a participant in Florida Safe Families Network (FSFN)[16] and assess the new child as part of the family functioning assessment.

Substance Exposed Newborn Protection

The number of babies born in Florida addicted to drugs has substantially increased in recent years. In just 1 year, from 2014 to 2015, the number of substance-exposed newborns increased from 1,903 to 2,487. Most of these newborns were opiate-addicted, such as from methadone, heroin, or oxycodone. Babies born addicted to opioids commonly remain hospitalized for weeks after they are delivered so doctors can gradually wean them off the drugs in their systems, usually by giving them diminishing amounts of morphine, phenobarbital (a relaxant) and other drugs to combat withdrawal symptoms.[17]

Abuse of drugs or alcohol by parents and other caregivers can have negative effects on the health, safety, and well-being of children ether through the harm caused prenatally or to children of any age by exposure to drug activity in their home or environment. The federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to have policies and procedures in place to notify child protective services agencies of substance-exposed newborns and to establish a plan of safe care for newborns identified as being affected by substance abuse or having withdrawal symptoms resulting from prenatal drug exposure.[18]

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[14] Department of Children and Families Operating Procedures. CFOP 170-7, Chapter 9 Establish Conditions for Return (March 24, 2017)(on file with the Senate Judiciary Committee).
[15] Department of Children and Families Operating Procedures. CFOP 170-5, Chapter 4 Investigation Types and Use of the Family Functioning Assessment (Jan. 30, 2017)(on file with the Senate Judiciary Committee).
[16] FSFN is Florida's Statewide Automated Child Welfare Information System (SACWIS) and serves as the official child welfare case record.
[17] Gluck, Frank, *Born High: Florida battles rising cases of addicted newborns*, *available at*: http://www.news-press.com/story/news/investigations/2016/07/16/born-high-florida-battles-rising-cases-addicted-newborns/87025868/ (last visited April 21, 2017).
[18] 42 U.S.C. s.5106a(b), as amended by the CAPTA Reauthorization Act of 2010 (P.L. 111-320).

The Comprehensive Addiction and Recovery Act (CARA)[19] further amended CAPTA in 2016 to add federal requirements for states to ensure the safety and well-being of infants following release from the care of health care providers by:

- Addressing the health and substance use disorder treatment needs of the infant and affected family members or caregivers;
- Monitoring plans of safe care to determine whether and how local entities are making referrals and delivering appropriate services to the infant and affected family or caregiver in accordance with state requirements; and
- Developing plans of safe care for infants affected by all substance abuse, not just illegal substance abuse, as was the requirement prior to 2016 changes.

In defining the term "harm," s. 39.01, F.S., includes exposing a child to controlled substances or alcohol as a form of harm. Exposure to a controlled substance or alcohol is established by:

- A test, administered at birth, which indicates that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or
- Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.[20]

Current law provides no requirement that the parents of substance-exposed newborns undergo an assessment or evaluation or complete treatment for substance abuse. The courts presently have sole discretion to determine whether a parent is required to undergo treatment.

Termination of Parental Rights

Out-of-Home Care

One of the grounds for a termination of parental rights is that on three or more occasions the child or another child of the parent or parents has been placed in out-of-home care under ch. 39, F.S., and the conditions that resulted in the out-of-home placement were caused by the parent or parents.[21] However, a prior placement of a child in out-of-home care in a state other than Florida cannot serve as a basis for the termination of parental rights.

Single Parent Termination

A termination of parental rights of one parent without a termination of parental rights of the other parent is permitted only if:

- The child has only one surviving parent;
- The identity of a prospective parent has been established as unknown after sworn testimony;
- The parent whose rights are being terminated is a parent through a single-parent adoption;
- The protection of the child demands termination of the rights of a single parent; or

[19] P.L. 114-198.
[20] Section 39.01(30)(g), F.S. As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03, F.S.
[21] Section 39.806(l), F.S.

- The parent whose rights are being terminated meets any of the criteria specified in s. 39.806(1)(d) and (f)-(m), F.S.[22]

Grounds for termination of parental rights in s. 39.806, F.S., that are not included in the list of grounds allowable for single parent terminations are:

- Conduct toward the child or other children by a parent that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. A provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency;[23] and
- A conviction of a parent for an offense that requires the parent to register as a sexual predator under s. 775.21, F.S.[24]

Supplemental Adjudication of Dependency

In 2008, the legislature amended s. 39.507, F.S., relating to adjudicatory hearings to provide:

> (7)(a) For as long as a court maintains jurisdiction over a dependency case, only one order adjudicating each child in the case dependent shall be entered. This order establishes the legal status of the child for purposes of proceedings under this chapter and may be based on the conduct of one parent, both parents, or a legal custodian.
>
> (b) However, the court must determine whether each parent or legal custodian identified in the case abused, abandoned, or neglected the child in a subsequent evidentiary hearing. If the evidentiary hearing is conducted subsequent to the adjudication of the child, the court shall supplement the adjudicatory order, disposition order, and the case plan, as necessary. With the exception of proceedings pursuant to s. 39.811, the child's dependency status may not be retried or readjudicated.[25]

Section 39.507, F.S., is not being applied uniformly across the state due to a conflict between holdings from the Third and Fifth District Courts of Appeals.[26] The Third District Court of Appeal in *D.A. v. Dep't of Children & Family Servs.*, affirmed the trial court's holding that a child may be adjudicated dependent twice, the second time based on a prospective risk of harm from a parent to a child.[27] In this case, the trial court adjudicated a child dependent based on the behavior of the mother and her consent to the adjudication of dependency of her child. Subsequently, the trial court adjudicated the child dependent based on the behavior of the father, which caused a substantial risk of imminent, but not actual harm to the child.[28] In contrast, the court in *P.S. v. Department of Children and Families*, 4 So. 3d 719 (Fla. 5th DCA 2009), held

[22] Section 39.811(6), F.S.
[23] Section 39.806(1)(c), F.S.
[24] Section 39.806(1)(n), F.S.
[25] Chapter 208-245, Laws of Florida.
[26] *See D.A. v. Department of Children & Family Services*, 84 So. 3d 1136, 1140 (Fla. 3d DCA 2012), and *P.S. v. Department of Children and Families*, 4 So. 3d 719, 720-721 (Fla. 5th DCA 2009).
[27] *D.A.*, *supra* note 23, at 1139.
[28] *Id*. at 1139-1140.

that a child may only be adjudicated dependent at a second evidentiary hearing if the second parent actually harms a child.[29]

Domestic Violence Injunction in Dependency

A child protective investigator (CPI) must implement separate safety plans for the perpetrator of domestic violence and a parent who is a victim of domestic violence as defined in s. 741.28, F.S. If the perpetrator of domestic violence is not the parent, guardian, or legal custodian of the child, the CPI shall seek issuance of an injunction authorized by s. 39.504, F.S., to implement a safety plan for the perpetrator and to impose any other conditions to protect the child.[30] The law does not address any action to be taken by the CPI if the perpetrator is not able to be located.

Parental Relocation with a Child

A parent who wishes to permanently relocate with a child more than 50 miles from the current residence must petition the court for permission to modify a court order establishing a time-sharing schedule, unless the other parent agrees to the relocation.[31] On first read, this provision appears only to apply to situations in which parents have a time-sharing arrangement for minor children.

However, the term "child" as used in s. 61.13001, F.S., is defined as any person under the jurisdiction of a state court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) or the subject of an order granting a parent or other person a right to time-sharing, residential care, kinship, or custody.[32] Therefore, the provisions on parental relocation may apply to situations in which a child is dependent.

A child custody proceeding is a proceeding in which legal custody, physical custody, residential care, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under ss. 61.524-61.540, F.S.[33]

In 2015, the Fourth District Court of Appeal held that the provisions of s. 61.13001, F.S., apply to permanent guardianship placements for a dependent child.[34] Therefore, according to this case, if a permanent guardian wishes to move with a dependent child more than 50 miles away, the guardian must file a motion for permission to relocate the child's residence. At the hearing, the court must issue an order based on the best interests of the child, just as is the case for any

[29] *P.S.*, *supra* note 23, at 720.
[30] Section 39.301(9)(a)6.a., F.S.
[31] Section 61.13001(1)(e), F.S.
[32] Section 61.13001(1)(a), F.S.
[33] Section 61.502(4), F.S.
[34] Section 39.6221, F.S.

relocation determination.[35] Still, the ability of a guardian to file a motion under s. 61.13001, F.S., is unclear.[36]

The issue of relocation with a child by a permanent guardian is addressed elsewhere, however. Section 39.6221(1)(e), F.S., requires a permanent guardian to provide notice to the court of any change in his or her residential address. Moreover, if the permanent guardian moves to another address in-state, the permanent guardian must still comply with visitation requirements as established by the court in its written order of guardianship.[37] Additionally, to ensure compliance with the UCCJEA, the department requires as standard procedure that every order of permanent guardianship include a provision that the child not be moved outside of the state without court permission.[38]

Confidential Information Sharing

Federal law requires children ages 14 years and older to participate in developing the case plan and requires the case plan to state the rights of the child to education, health, visitation, and court participation, and the right to stay safe and avoid exploitation.[39] The new federal language does not provide protections for confidential information that might be shared at a case planning conference, and there are currently no statutory safeguards in Florida law related to the confidentiality of information shared at a case planning conference.

Confidentiality of Reports and Records in Cases of Child Abuse or Neglect

Section 39.202, F.S., provides a public records exemption for all records held by the department on reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline operated by the department. Limited disclosure is authorized for the following entities and purposes, including:

- Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, or county agencies responsible for carrying out:
  - Child or adult protective investigations and services; and
  - Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, F.S., family day care homes, and other homes used to provide for the care and welfare of children;
- Criminal justice agencies having appropriate jurisdiction;
- The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings;

[35] *T.B. v. Department of Children & Families*, 189 So. 3d 150, 152 (Fla. 4th DCA 2015).
[36] *Id*. at 152-153. Section 61.13.001(1)(d), F.S., defines a parent, for purposes of parental relocation, as any person named by court order or express written agreement who is subject to court enforcement or a person reflected as a parent on a birth certificate and who is entitled to access to or time-sharing with the child.
[37] Section 39.6221(2)(c), (d), and (e), F.S.
[38] Email from Rachel Moscoso, Dep't of Children & Families, to staff with the Senate Judiciary Committee (April 18, 2017)(on file with the Senate Judiciary Committee.
[39] P.L. 113-183.

- An appropriate state attorney, grand jury, or court including the Division of Administrative Hearings or the Public Employees Relations Commission;
- Any appropriate official of the department or the Agency for Persons with Disabilities who is responsible for:
  - Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult;
  - Taking administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or
  - Employing and continuing employment of personnel of the department or the agency;
- Employees or agents of the Department of Revenue responsible for child support enforcement activities;
- Certain employees of a local school district or the Department of Education; or
- Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed residential group home, an approved relative or nonrelative preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.[40]

Relative Caregiver Ineligibility

A substantial amount of research acknowledges that children in the care of relatives, or what is often referred to as "kinship care," are less likely to change placements and benefit from increased placement stability, as compared to children placed in general foster care. Most child welfare systems strive to place children in stable conditions without multiple living arrangement changes. As opposed to children living in foster care, children living in kinship care are more likely to remain in their own neighborhoods, be placed with siblings, and have more consistent interactions with their birth parents than do children placed in foster care.[41]

Recognizing the importance of relative placements, the Legislature created the Relative Caregiver Program in 1998 to provide financial assistance to eligible relatives caring for children who would otherwise be in foster care.[42] In 2014, the Legislature expanded the program to include specified nonrelative caregivers.[43]

According to the department, as of December 31, 2016, Florida had 13,056 children in kinship foster care placements and 12,478 children in licensed foster care placements.[44]

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[40] Section 39.202(2), F.S.
[41] David Rubin and Kevin Downes, et al., *The Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care* (June 2, 2008), *available at*: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2654276/, (last visited April 12, 2017).
[42] Section 39.5085(1), F.S.
[43] Chapter 2014-224, Laws of Florida.
[44] Florida Department of Children and Families, DCF Quick Facts, *available at*: http://www.dcf.state.fl.us/general-information/quick-facts/cw/ (last visited April 12, 2017).

Children receiving cash benefits under the Relative Caregiver Program are not eligible to simultaneously receive WAGES cash benefits under chapter 414, F.S.[45] A department rule provides that the parent's presence in the home with the child and relative caregiver for 30 days or more results in the child becoming ineligible for Relative Caregiver Program funds.[46] Currently, s. 39.5085, F.S., is silent on the issue of parents and stepparents living in the home with the child and relative caregiver, and this has resulted in cases where the courts have ordered the department to pay Relative Caregiver Program funds contrary to federal law.

Medical Records

Currently, ch. 395, F.S., relating to hospital licensing and regulation, and ch. 456, F.S., relating to health professions and occupations, address the release of patient records.

Section 395.3025(4)(g), F.S., provides that patient records are confidential and must not be disclosed without the consent of the patient or a legal representative. However, disclosure may be made without consent to entities including the department or its agent for investigations of abuse, neglect, or exploitation of children or vulnerable adults. This provision enables the department and its agents to access medical records for children in care without the patient's written authorization.

However, physician office practices not licensed under ch. 395, F.S., have no authority to release patient records to the department without the patient's written authorization.[47] These records, however, may be important to the investigation of child abuse and neglect.

Background Screening for Group Home Personnel

Current law requires all caregivers in residential group homes to meet the same education, training, and background and other screening requirements as foster parents.[48] A department rule requires foster parents to be screened through the central abuse hotline.[49] However, current law also provides that information in the central abuse hotline may not be used for employment screening, except as provided in ss. 39.202(2)(a) and (h) or 402.302(15), F.S.[50] Residential child caring agencies are not included in the exceptions. Therefore, reports to the central abuse hotline may not be used for conducting background checks of residential group care personnel.

Children's Services Councils

In 1986, the Legislature authorized Florida counties to create by ordinance children's services councils as countywide special districts to fund children's services. Counties may create:[51]

- Independent special districts, for which the county governing body must seek voter approval to levy annual ad valorem property taxes;[52] or

[45] Sections 414.045(1)(b)3. and 414.095(2)(a)5., F.S.
[46] Chapter 65C-28.008(2)(d), F.A.C.
[47] Section 456.057(7), F.S.
[48] Section 409.145(2)(e), F.S.
[49] Chapter 65C-13.023(2) and (8), F.A.C.
[50] Section 39.201(6), F.S.
[51] Chapter 86-197, L.O.F.
[52] Section 125.901(1), F.S.

- Dependent special districts, which are supported by appropriation and are authorized to accept grants and donations from public and private sources.[53]

Children's services councils are authorized to exercise the following powers and functions:
- Provide preventive, developmental, treatment, rehabilitative, and other services for children;
- Provide funds to other agencies that operate for the benefit of children, with the exception of the public school system;
- Collect data and conduct research to determine the needs of the children in the county;
- Coordinate with providers of children's services to prevent duplication of services; and
- Lease or buy necessary real estate, equipment and personal property.[54]

The governing body of the county shall submit to the electorate the question of retention or dissolution of a children's services council established as an independent special district having voter-approved taxing authority in a general election according to the following schedule:
- For a district in existence on July 1, 2010, and serving a county having a population of 400,000 or fewer persons as of that date.....2014.
- For a district in existence on July 1, 2010, and serving a county with a population of 2 million or more persons as of that date.....2020.[55]

The Children's Trust of Miami is the only council in a county having a population of 2 million or more. The trust was created in 2002 and was renewed by referendum in 2008.[56]

Placement Assessment

Research shows an association between frequent placement disruptions and adverse outcomes on a child, including poor academic performance and social or emotional adjustment difficulties such as aggression, withdrawal, and poor social interaction with peers and teachers. Despite this evidence, child welfare systems have shown a limited focus on reducing placement instability for children in their care.[57] Mismatching placements to children's needs has been identified as a factor that negatively impacts placement stability. Identifying the right placement requires effective assessment.[58]

When a child is unable to safely remain at home with a parent, the most appropriate available out-of-home placement may be chosen after analyzing the child's age, gender, sibling status, special physical, educational, emotional and developmental needs, alleged type of abuse, neglect or abandonment, community ties and school placement, and potential responsible caregivers that can meet the child's needs.[59]

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[53] Section 125.901(7), F.S.
[54] Section 125.901(2), F.S.
[55] Section 125.901(4), F.S.
[56] The Children's Trust of Miami-Dade County, *available at*: https://www.thechildrenstrust.org/about .(last visited April 13, 2017).
[57] Noonan, K. and Rubin, D., et al. *Securing Child Safety, Well-being, and Permanency Through Placement Stability in Foster Care*, The Children's Hospital of Philadelphia Research Institute, Fall 2009.
[58] Teija Sudol, *Placement Stability Information Packet*, National Resource Center for Permanency and Family Connections, December 2009.
[59] Rule 65C-28.004, F.A.C

Lead agencies must consider placement in residential group care if the child is 11 or older, has been in licensed family foster care for 6 months or longer and removed from family foster care more than once, and has serious behavioral problems or has been determined to be without the options of either family reunification or adoption. In addition, the assessment must consider information from several sources, including psychological evaluations, professionals with knowledge of the child, and the desires of the child concerning placement. If the lead agency case managers determine that residential group care would be an appropriate placement, the child must be placed in residential group care if a bed is available.[60] A child who does not meet the specified criteria may be placed in residential group care if it is determined that such placement is the most appropriate for the child.[61]

These placement requirements were enacted in 2001 and 2002 to allow increased use of residential group home placements until additional foster homes could be recruited.[62] However, while the 2001 and 2002 legislation was being considered by the Legislature, the department expressed concerns that the impact of proposed legislation ran contrary to published literature, guidance from the federal government, and the actions of other states in moving away from group home care.[63]

Lead Agency Executive Compensation

The portion of the Internal Revenue Code that sets the rules governing compensation at public nonprofits, including those known as 501(c)3 organizations, specifies that no part of the net earnings of a section 501(c)3 organization may inure to the benefit of any private shareholder or individual.[64] However, the IRS also gives each nonprofit's board of directors latitude in determining how much to pay top employees. The IRS does require that the nonprofit's board have an objective process for setting executive salaries, including use of comparisons with salaries paid by similar organizations for similar services. However, a nonprofit that normally pays no taxes may be taxed for paying excess benefits to an insider.[65]

Disagreement exists within the nonprofit community about whether administrators of nonprofits need to be highly paid to remain and provide leadership in the nonprofit sector. Regarding the use of federal funds to pay executive salaries, the federal government generally caps at $196,000 how much of a nonprofit executive's salary can be paid with federal funds. A nonprofit can easily get around the standard by reporting that private funds are used to pay the portion of salary that exceeds the limit.[66] Some states have taken steps to impose similar caps.

[60] Sections 39.523(1) and 409.1676, F.S.
[61] Section 39.523(4), F.S.
[62] Sections. 39.523(1), 409.1676(2)(b), 409.1677 and 409.1679(1), F.S.
[63] Testimony from committee meetings: Senate Children and Families Committee, SB 623, January 30, 2002; Senate Children and Families Committee, SB 1214, March 14, 2001; House Child and Family Security Committee, HB 1145, March 15, 2001; House Child and Family Security Committee, HB 755, February 7, 2002.
[64] 26 U.S.C. s. 501. Exemption from tax on corporations, certain trusts, etc.
[65] *Id.*
[66] Accountable California: The Center for Public Accountability. Executives at Publicly-Funded Nonprofits Make Big Bucks Serving the Needy. March 16, 2011, *available from*: http://www.seiu721.org/2009/10/executives-at-publicly-funded-nonprofits.php (last visited April 14, 2017).

A provision in New Jersey's budget limits what nonprofit groups can pay their chief executives if they are providing social services under state contracts.[67] Beginning July 1, 2010, the state capped the salaries of executives with any nonprofit social service agency having a budget greater than $20 million at $141,000. Executive directors of nonprofit groups who oversee budgets between $10 million and $20 million are capped at no more than $126,900 in state compensation. Persons overseeing a budget between $5 million and $10 million are limited to $119,850 a year from the state, and those with a budget less than $5 million are capped at $105,750 in salary from the state.

In Florida, each community-based care lead agency is required to post on its website the current budget for the lead agency, including salaries, bonuses, and other compensation paid, by position, for the agency's chief executive officer, chief financial officer, and chief operating officer, or their equivalents.[68]

The following chart details executive compensation for each community-based care lead agency and allows for a comparison of chief executive officer salaries, the number of children receiving both in-home and out-of-home services, and the agency annual contract amount. There does not appear to be a correlation between executive compensation and other factors.[69]

CBC Lead Agency	Chief Executive Officer Annual Compensation From CBC Contract	# of Children Receiving Services	Annual Contract Amount (Millions)	% of Budget from Public Funds
Lakeview Center – Families First Network	$199,784	2,087	$46.5	NA
Big Bend Community-Based Care [70]	$367,380	1,180	$35.3	99.08
Partnership for Strong Families	$145,000	1,321	$33.8	99.67
Family Support Services of North Florida	$200,155	1,578	$56	99.64
Community Partnership for Children	$150,822	1,670	$34.5	100.00

[67] Livio, S.K. April 25, 2010. *N.J. Governor Chris Christie aims to cap salaries of nonprofit group executives to $141K. available from*: http://www.nj.com/news/index.ssf/2010/04/nj_gov_chris_christie_aims_to.html (last visited April 14, 2017). Also see Strom. S. July26, 2010. Lawmakers Seeking Cuts Look at Nonprofit Salaries, *available from*: http://www.nytimes.com/2010/07/27/us/27nonprofit.html?pagewanted=all (last visited April 14, 2017).

[68] Section 409.988(1)(d), F.S.

[69] The department provided annual contract amounts, # of FTE's and # of children receiving services. *See also* Center for Child Welfare, available at http://centerforchildwelfare.fmhi.usf.edu/Datareports/TrendReports.shtml
Individual agency websites report compensation amounts. The table was compiled by the Senate Committee on Children, Families, and Elder Affairs.

[70] Big Bend Community Based Care serves as both the CBC lead agency and as the Managing Entity (ME) The CEO receives income from both state contracts for a total of $474,123.

CBC Lead Agency	Chief Executive Officer Annual Compensation From CBC Contract	# of Children Receiving Services	Annual Contract Amount (Millions)	% of Budget from Public Funds
St. Johns County Commission	$82,000	279	$5.7	NA
Kids First of Florida	$108,000	386	$8.7	99.99
Sarasota Family YMCA	$148,484	1,490	$29.3	NA
Eckerd Community Alternative Pinellas/Pasco	$164,243	2,650	$67.4	NA
Eckerd Community Alternatives Hillsborough	$176,436	3,762	$73.6	NA
Children's Network of SW Florida	$177,654	2,391	$40	99.99
Brevard Family Partnership	$195,297	1,135	$23.4	98.84
CBC of Central Florida	$243,386	2,742	$70	99.96
Kids Central	$206,794	2,311	$48.5	99.99
Heartland for Children	$155,000	1,910	$43.6	100.00
Devereux Community Based Care	$131,211	1,011	$28.6	NA
ChildNet Palm Beach and Broward	$227,894	5,904	$44.4 (PB) $72.3 (B)	100.00
Our Kids of Miami Dade	$207,489	3,056	$104.2	100.00

In 2015, during an operational audit of community-based care lead agencies, the Auditor General found instances where salary payments, including bonuses, selected perquisites, and severance pay, or leave balances did not appear to be properly supported or calculated in accordance with established community-based care policy or state law.[71]

State law specifies that no extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made. The audit discovered salary

[71] Office of the Auditor General, *Department of Children and Families and Selected Community-Based Care Lead Agencies Oversight of Foster Care and Related Service*. Report No. 2015-156, pg. 1 (March 2015).

payments made with department-provided funds included a $15,000 bonus awarded to the CEO of Big Bend Community Based Care in December 2012, which was not supported by a provision in the CEO's employment contract. In response to the audit inquiry, lead agency management indicated that bonuses awarded at the discretion of the Board were based on market standards and performance.

However, as the CEO's employment contract did not provide for the payment of bonuses, the $15,000 bonus payment was extra compensation prohibited by state law. The audit procedures also found that the lead agency had not established policies and procedures regarding the award and calculation of bonuses for staff.[72]

Unaccompanied Homeless Youth

Unaccompanied homeless youth are children, most often teenagers, experiencing homelessness while not in the physical custody of a parent or guardian. It is estimated that 1.6 to 1.7 million youth experience homelessness on their own each year. These youth live in a variety of unsafe, temporary situations, including cars, parks, the homes of other people, shelters, and motels. Most of these young people have left home due to severe dysfunction in their families, including abuse and neglect. Studies have found that 20-40 percent of unaccompanied homeless youth were abused sexually in their homes, while 40-60 percent were abused physically. Over two-thirds of unaccompanied homeless youth report that at least one of their parents abuses drugs or alcohol. Other youth are thrown out of their homes because they are pregnant, gay or lesbian, or because their parents believe they are old enough to take care of themselves.[73]

In 2012, the Legislature enacted legislation to give homeless youth ages 16 and older the ability to request and receive their birth certificate from the state.[74] Without a birth certificate, minors who are not in the physical custody of a parent or guardian cannot obtain other forms of identification, such as a Social Security card, driver's license or state identification card. Without such documentation, they face barriers that hinder their ability to recover from homelessness.

In 2014, the Legislature expanded the 2012 law to enable unaccompanied homeless youth the ability to seek medical care for themselves or their children without parental consent.[75]

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., to create a definition for the term "legal father" and amend the definition of the term "parent." These revised definitions work in concert with other procedures in an attempt to provide notice to biological fathers of a child in shelter proceedings.

Section 2 amends s. 39.201, F.S., relating to mandatory reporting and the child abuse hotline, to allow the use of information in the central abuse hotline for the employment screening of caregivers employed by residential group homes.

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[72] *Id*.
[73] National Association for the Education of Homeless Children and Youth, Unaccompanied Homeless Youth, *available at*: http://www.naehcy.org/educational-resources/youth, (last visited April 14, 2017).
[74] Section 743.067(3)(a), F.S.
[75] *Id*.

Section 3 amends s. 39.202, F.S., relating to the confidentiality of reports and records in child abuse and neglect cases. This provision adds to the list of limited circumstances in which these records and reports may be released to include employment screening for caregivers in residential group homes. Current law authorizes a release of child abuse and neglect records for the purpose of licensing or approving adoptive homes, foster homes, childcare facilities, facilities licensed to serve persons with developmental disabilities, family day care homes, and other homes used to provide for the care and welfare of children. This bill also expands from up to 30 to up to 60 days, the number of days the department has to provide access to the parent or legal custodian of the child in the record or to any person identified in a report as having harmed the child.

Section 4 amends s. 39.301, F.S., relating to protective investigations, to require a child protective investigator to implement a safety plan for a perpetrator of domestic violence only if the investigator is able to locate the perpetrator. It also clarifies when a CPI must seek an injunction to prevent child abuse pursuant to s. 39.504, F.S., pending the disposition of the petition for dependency. The bill also requires that when a child is born into or moves into a home that is under a protective investigation, the child must be added to the investigation and assessed for child safety.

Section 5 amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment or neglect, to provide that if an individual employed as a caregiver in a residential group home is named in any capacity in three or more reports to the child abuse hotline within a 5-year period, those reports may be reviewed for employment screening.

Section 6 amends s. 309.402, F.S., relating to placement in a shelter, to require additional inquiry by the court at a shelter hearing to identify and locate the legal father of the child and provide requirements for the inquiry.

Section 7 amends s. 39.503, F.S., relating to cases where the identity or location of a parent is unknown when a dependency petition is filed, to require additional inquiry under oath by the court to identify and locate the legal father of the child. The bill also provides that the required diligent search include a search of the Florida Putative Father Registry.

Section 8 amends s. 39.504, F.S., relating to injunctions, to require the same judge to hear both the dependency proceeding and the injunction proceeding when applicable. The bill also provides that if an alleged offender cannot be located after a diligent search, the court may enter an injunction based on the sworn petition and any affidavits.

Section 9 amends s. 39.507, F.S., to resolve conflicting decisions of the Third and Fifth District Courts of Appeal as to whether a petitioner must demonstrate that the second parent has actually harmed a child already adjudicated dependent based on the behavior of the first parent. The language in the bill adopts the interpretation of law provided by the Third District Court of Appeal in *D.A. v. Dep't of Children & Family Servs*.[76] Therefore, the bill specifies that a court may make supplemental findings to the original order regarding the conduct of the second parent

[76] *D.A.*, *supra* note 23, at 1140.

short of a showing of actual harm or abuse. Instead of finding harm caused by the second parent, the court may add a finding to the record that the second parent placed the child at substantial risk of imminent abuse, abandonment, or neglect. The court is also not required to conduct an evidentiary hearing for the second parent in order to supplement an order or case plan if the parent consents to or admits the relevant allegations or fails to appear at an arraignment hearing.

Section 10 amends s. 39.5085, F.S., relating to the Relative Caregiver Program, to prohibit a relative or non-relative caregiver from receiving a payment under the program if the parent or stepparent of the child resides in the home. However, a caregiver may receive a payment for a minor parent who is in his or her care, if the minor child as well as the minor parent's child are living in the home and both children have been adjudicated dependent. The proposed changes will align s. 39.5085, F.S., with s. 414.095 F.S., and federal law.

Section 11 amends s. 39.521, F.S., to replace the requirement for a predisposition study with a requirement for a family functioning assessment and revise the timelines for providing a copy of the case plan to the parties. The bill also replaces general references to the department's prevention and reunification efforts with a requirement for a specific in-home safety plan prepared or approved by the department.

Under this new requirement the court must review and make findings on whether a child can safely remain in or return to the home based upon the in-home safety plan and available safety management services. The bill also provides that when a child is adjudicated dependent based upon evidence of harm related to exposure of a child to a controlled substance or alcohol, the parent is required to undergo a substance abuse disorder assessment or evaluation and comply with treatment and services that are determined to be necessary.

The bill also specifies the information that must be provided to the court in the family functioning assessment and changes the standard for returning a child home from "parent having substantially complied with the case plan" to "circumstances that caused the out-of-home placement and issues subsequently identified have been remedied."

Section 12 amends s. 39.522, F.S., relating to postdisposition change of custody, to change the standard for returning a child home from "parent having substantially complied with the case plan" to "circumstances that caused the out-of-home placement and issues subsequently identified have been remedied."

Section 13 amends s. 39.523, F.S., effective January 1, 2018, relating to placement in out-of-home care, to require the department to establish a comprehensive placement assessment process to determine the most appropriate match for the level of care needed by the child. The bill requires the community-based lead care agency or a subcontracting agency to establish and coordinate a multi-disciplinary team in determining placement for the child. After the team is established, the team must document data and information on a variety of factors relating to the child and determine placement based upon these factors and any additional evaluations.

The bill requires the department to document placement assessments in the Florida Safe Families Network (FSFN).[77] On a semi-annual basis, the department must collect and post information on its website related to the placement of children in out-of-home care, and update the information on January 1 and July 1 of each year.

Section 14 creates s. 39.6001, F.S., relating to safe-care plans for substance-exposed newborns. The bill requires the department, in coordination with the Department of Health, the Agency for Health Care Administration, and others, to develop a strategy for coordinated services to ensure the safety and well-being of newborns with prenatal substance exposure through the implementation of a safe-care plan. The safe-care plan will prescribe treatment needs and services of the newborn.

Section 15 amends s. 39.6011, F.S., relating to case plan development, to provide that the department may discuss confidential information during a case planning conference and requires all conference participants to maintain the confidentiality of shared information.

Section 16 amends s. 39.6012, F.S., relating to case plan tasks and services, to require that whenever there is evidence of harm related to exposure of a child to a controlled substance or alcohol, the case plan must include a required task that the parent undergo a substance abuse disorder assessment or evaluation and comply with treatment and services that are determined to be necessary.

Section 17 amends s. 39.6221, F.S., to provide that the requirements of s. 61.13001, F.S., relating to parental relocation, do not apply to permanent guardianships established under chapter 39, F.S. As such, permanent guardians of a dependent child will not need the approval of a court to relocate their residences. However, these guardians will be required to report their new addresses and continue with any visitation requirements, but these guardians, pursuant to department rules, are required to have court approval to move out of the state with a dependent child.

Section 18 amends s. 39.701, F.S., relating to judicial review, to require the department to assess a child for child safety and provide notice to the court when the child is born into or moves into a home that is under court jurisdiction. The bill also provides a timeline for both the safety assessment and a progress update that are to be filed with the court and provides the department with rulemaking authority.

Section 19 amends s. 39.801, F.S., relating to court procedures, jurisdiction, notice, and service of process, to address notice requirements for a petition of termination of parental rights to a prospective father if there is no legal father.

Section 20 amends s. 39.803, F.S., relating to unknown identity or location of a parent after a termination for parental rights petition has been filed, to require additional information to the

[77] The FFSN is Florida's Statewide Automated Child Welfare Information System, considered to be the official child welfare case record. The FFNS is accessed by the Florida Abuse Hotline, child protective investigators, adult protective investigators, and others. Department of Children and Families, *Florida Safe Families Network Overview*, available *at* http://www.dcf.state.fl.us/initiatives/GMWorkgroup/docs/meeting060809/June%208%20presentation%20-%20Pasek.pdf (last visited April 17, 2017).

inquiry conducted by the court to identify or locate a parent and authorizes the court to order scientific testing to determine maternity or paternity of the child.

Section 21 amends s. 39.806, F.S., relating to termination of parental rights, to allow child removals in other states, territories or jurisdictions to be considered when establishing a ground for termination of parental rights.

Section 22 amends s. 39.811, F.S., relating to powers and orders of disposition, to add to the list of circumstances in which one parent is subject to a termination of parental rights based on possible harm to the life, safety, well-being, or physical, mental, or emotional health of the child, regardless of whether that parent is convicted of an offense requiring registration as a sexual predator under s. 775.21, F.S.

Section 23 amends s. 125.901, F.S., relating to children's services councils, to provide an exception to a requirement that a county submit the question of retention or dissolution of a district having voter-approved taxing authority to the general electorate in a general election.

Section 24 amends s. 322.051, F.S., relating to identification cards, to provide a requirement for a statement on the back of cards for unaccompanied homeless youth to acknowledge that they have been certified as such and include a citation to s. 743.067, F.S.

Section 25 amends s. 395.3025, F.S., relating to patient and personnel records, to allow these confidential records to be disclosed to contracted entities of the department without consent of the patient or his or her legal representative. Private physician offices have requested statutory authority to provide these records to child protective investigators and dependency case managers.

Section 26 amends s. 402.40, F.S., relating to child welfare training and certification, to define a "child welfare trainer" and provide the department rulemaking authority to determine standards for these trainers to ensure that they are qualified to train child welfare professionals. There are currently no standards in place.

Section 27 creates s. 409.16741, F.S., effective January 1, 2018, relating to prenatal substance abuse, to require the department to establish or adopt one or more initial screening and assessment instruments to address and treat the needs of substance-exposed newborns in the context of the family environment. To further this goal, the department or the community-based lead care agency must regularly conduct multidisciplinary staffings on services, jointly assess local service capacity for substance-exposed newborns, and adopt a plan to ensure that substance-exposed newborns are assigned to child-protective investigators and case managers having specialized training in this area.

Section 28 creates s. 409.16742, F.S., which requires the department to establish a pilot program that will provide shared family care residential services for substance-exposed newborns. In establishing the pilot program, the bill requires the department to enter into a contract with the designated lead agency or with a private entity capable of providing appropriate residential care. Shared family care will involve temporarily placing both the substance-exposed newborn and his or her entire family in the home of a family trained to mentor and provide support to the

biological parents. The family temporarily placed will receive services specified by the department. The pilot program is limited to newborns and families in the Fourth Judicial Circuit.

Section 29 amends s. 409.992, F.S., relating to community-based care lead agency expenditures, to prohibit the use of state-appropriated funds to pay the salaries of administrative employees of lead agencies in amounts in excess of the salary of the secretary of the department. The current annual salary of the secretary is $140,539, and 15 of 18 lead agencies pay their CEOs in excess of this amount.

Section 30 amends s. 456.057, F.S., relating to ownership and control of patient records, to allow the disclosure of confidential records to the department, its agent or its contracted entity, for the purpose of conducting child protective investigations of or providing services in cases of abuse, neglect or exploitation of children or vulnerable adults.

Section 31 repeals s. 409.141, F.S., relating to equitable reimbursement methodology of group homes, to remove obsolete requirements.

Section 32 repeals s. 409.1677, F.S., relating to model comprehensive residential services programs, to remove obsolete programs.

Section 33 amends s. 743.067, F.S., relating to certified unaccompanied homeless youth to define "certified unaccompanied homeless youth," to allow a continuum of care lead agency or its designee to certify a youth as an unaccompanied homeless youth, require the department's Office on Homelessness to develop a form to be used when certifying a youth, and authorize certified youth to apply for an identification card with the Department of Highway Safety and Motor Vehicles.

Section 34 amends, s. 1009.25, F.S., relating to tuition and fee exemptions for postsecondary education, to remove a reference to temporary shelter for individuals intended to be institutionalized and to clarify that college or university dormitory housing is not permanent housing.

Section 35 amends s. 39.524, F.S., relating to safe-harbor placement, to conform a cross-reference.

Section 36 amends 394.495, F.S., relating to child and adolescent mental health system of care, to conform a cross-reference.

Section 37 amends s. 409.1678, F.S., relating to specialized residential options for children who are victims of sexual exploitation, to conform a cross-reference.

Section 38 amends s. 960.065, F.S., relating to eligibility for awards, to conform a cross-reference.

Section 39 amends s. 409.1679, F.S., relating to reimbursement, to conform cross-references.

Section 40 amends s. 1002.3305, F.S., relating to College-Preparatory Boarding Academy Pilot Program for at risk students, to conform a cross-reference.

Section 41 reenacts s. 483.181(2), F.S., relating to acceptance, collection, identification, and examination of specimens.

Section 42 appropriates $250,000 of nonrecurring funds from the General Revenue Fund to the department for Fiscal Year 2017-2018 to implement a shared family care residential services pilot program created in Section 28 of the bill.

Section 43 provides an effective date of July 1, 2017, except for the provisions in Section 13 relating to the removal of a child from a home and placement in out-of-home care, and Section 27 relating to screening and assessments, multidisciplinary staffings, and child protective investigator and case manager training requirements to serve substance-exposed newborns and their families, which take 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:

By limiting the amount of state funds that may be used to pay the salaries of administrative employees of community based care lead agencies, more funding may be available to provide services to children and families. Conversely, some of the highly paid administrative employees will have lower salaries, assuming that the salary reductions resulting from the bill are not offset with other funds.

Additionally, a parent involved in a paternity issue for a dependent child may have to pay the cost of a paternity test.

C. Government Sector Impact:

Although the bill requires the department to develop a process to perform abuse registry checks for residential group care employees in accordance with s. 39.201(6), F.S., the department estimates that increased workload can be absorbed by existing staff.

The bill makes changes to s. 39.523, F.S., to require a full placement assessment on every child who enters out-of-home care. Although a workload impact in developing the assessment tool is expected, the impact to the community-based care lead agencies is unknown[78] but is expected to be absorbed within each lead agency's existing resources. The bill also requires the department to collect data from each community-based care lead agency and post it to the department's website, and update the information twice a year.

In the provisions relating to substance-exposed newborns, the department is required to develop screening and assessment tools for treatment and services. Child protective investigators and case managers must receive specialized training in working with substance-exposed newborns. Regarding the requirements specific to the shared family care residential services program, the department may contract with the designated community-based care lead agency or a private entity to provide residential care for the substance exposed newborns and their families. The bill appropriates $250,000 from the General Revenue Fund for Fiscal Year 2017-2018 to the department to conduct the shared family care residential services pilot program in the Fourth Judicial Circuit. The department may expend up to $250,000 to serve substance-exposed newborns and their families. Services can include, but are not limited to, residential treatment services and individual wrap-around services.

The bill is expected to reduce costs incurred by the community-based care lead agencies for paternity tests to the extent the court assesses those costs against the parent (Lines 590 through 601 of the bill). The cost of a paternity test ranges from $50 to $500, depending on the type of test. During Fiscal Year 2015-2016, Children's Legal Services served more than 52,414 children. If paternity testing is required in 5 percent of the cases, the department and its community-based care lead agencies could save between $131,000 and $1,310,000 annually.

VI. Technical Deficiencies:

None.

[78] Department of Children and Families, *2017 Agency Legislative Bill Analysis* (March 2, 2017)(on file with the Senate Judiciary Committee).

VII. Related Issues:

The Definitions of "Legal Father" and "Parent" as Used in Ch. 39, F.S.

Section 1 creates a definition of the term "legal father." This definition is also included within the definition of "parent". The purpose or intent of having duplicate definitions of the same term is not clear.

Use of Central Abuse Hotline Information for Employment Screening for Caregivers at Residential Group Homes

Section 2 allows the department to release central abuse hotline information to be used for employment screening of caregivers employed at residential group homes. In the past, constitutional due process concerns have been raised about using unsubstantiated information in a report to the central abuse hotline for employment screening.[79] Notably, the bill does not require that a person be notified of an adverse employment decision based on a report to the hotline or give the person an opportunity to challenge the allegations submitted to the hotline.

Section 3 increases from 30 to 60 days the amount of time the department has prior to having to make confidential records of child abuse, abandonment, or neglect available to a person identified in the report as having harmed the child.

Shared Family Care Residential Services Pilot Program

Section 28 establishes the Shared Family Care Residential Services Pilot Program. Shared family care will involve temporarily placing both the substance-exposed newborn and his or her entire family in the home of a family trained to mentor and provide support to the biological parents. The bill does not identify who develops the training protocol or who provides the training. Additionally, the bill does not specify the type and length of training provided to the family prior to placement, or include any safeguards typically required of other temporary placements, such as for foster families. Safeguards typically required in other out-of-home placements of children include a home study by a licensed social worker, a full Level 2 background screening for persons in the home who are older than the age of 18, and compliance with uniform fire safety standards. Additionally, members from the placed family are not required to undergo background screening, even if other children reside in the placed home.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.201, 39.202, 39.301, 39.302, 39.402, 39.503, 39.504, 39.507, 39.5085, 39.521, 39.522, 39.523, 39.524, 39.6011, 39.6012, 39.6221, 39.701, 39.801, 39.803, 39.806, 39.811, 125.901, 322.051, 394.495, 395.3025, 402.40, 409.1678, 409.1679, 409.992, 456.057, 743.067, 960.065, 1002.3305, and 1009.25.

[79] Committee on Children, Families, and Elder Affairs, The Florida Senate, Issue Brief 2011-205: Review of State Child Abuse Registries (Oct. 2010), https://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-205cf.pdf; Julianna Debler, University of Central Florida, *Has the pendulum swung too far? A legal evaluation of Florida's child abuse and neglect registry* (2012), *Available at* http://stars.library.ucf.edu/cgi/viewcontent.cgi?article=2327&context=honorstheses1990-2015.

The bill creates the following sections of the Florida Statutes: 39.6001, 409.16741, and 409.16742.

This bill reenacts section 483.181(2) of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 409.141, and 409.1677.

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 25, 2017:
The committee substitute:

- Changes the effective date of Section 27 of the bill, relating to screening and assessment, staffings, and specialized training requirements for substance-exposed newborns and their families, to January 1, 2018.
- Provides a nonrecurring appropriation to the department of $250,000 from the General Revenue Fund for Fiscal Year 2017-2018 for the implementation of the shared family care residential services pilot program in the Fourth Judicial Circuit to serve substance-exposed newborns and their families.

CS/CS by Judiciary on April 19, 2017:
The committee substitute:

- Requires the court at a child placement hearing to review the in-home safety plan and available safety management services available to protect a child in making its findings to remove the child or allow the child to remain in the home.
- Requires the appropriate community-based care lead agency or subcontracted agency to establish a multi-disciplinary team to determine appropriate placement after gathering customized data and information on each child.
- Requires the department to collect and post on its website data on out-of-home placements, rather than requiring the department to draft and provide a report to the Governor and the Legislature.
- Requires the department and community-based lead care agencies to establish a safe-care plan and develop and implement a coordinated approach to offering treatment and services to substance-abused newborns and their families.
- Creates a shared family care residential services pilot program in the Fourth Judicial Circuit to facilitate the temporary placement of substance-exposed newborns and their family in the home of a volunteer trained family for the purpose of being mentored and receiving treatment and services.
- Allows for the disclosure of child abuse records held by the department for the purpose of screening employees as caregivers in residential homes, including but not limited to abuse hotline records.
- Increases from up to 30 days to up to 60 days, the number of days the department has prior to having to make confidential records of child abuse, abandonment, or neglect

available to parents or legal custodians of the child, or a person identified in the report as having harmed the child.
- Provides that a continuum of care lead agency or its designee may certify a youth as an unaccompanied homeless youth.
- Changes the effective date of the bill to July 1, 2017, except for the provisions in Section 13 of the bill relating to the removal of a child from a home and placement in out-of-home care, which take effect January 1, 2018.

CS by Children, Families, and Elder Affairs on March 13, 2017:
The committee substitute:
- Allows certified unaccompanied homeless youth to apply for identification cards with DHSMV that contain a statement that they have been certified by an authorized entity and a statutory citation on the back.
- Clarifies eligibility for tuition exemptions for unaccompanied and homeless youth.
- Clarifies current law related to unaccompanied homeless youth allowing them to obtain medical care without parental permission.
- Changes the effective date of the bill to January 1, 2018.

B. Amendments:

None.

126346

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
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	.	
	.	

The Committee on Appropriations (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1773 - 1829
and insert:
Section 27. Effective January 1, 2018, section 409.16741, Florida Statutes, is created to read:
409.16741 Substance-exposed newborns; legislative findings and intent; screening and assessment; case management; training.—
(1) LEGISLATIVE FINDINGS AND INTENT.-

126346

(a) The Legislature finds that children, their families, and child welfare agencies have been affected by multiple substance abuse epidemics over the past several decades, and parental substance abuse is again becoming a growing reason for removing children from their homes and placing them in foster care.

(b) The Legislature also finds that infants are the largest age group of children entering foster care and that parental substance abuse disorders are having a major impact not only on increasing child removals, but also on preventing or delaying reunification of families and increasing termination of parental rights.

(c) The Legislature further finds that two aspects of parental substance abuse affect the child welfare system: prenatal exposure when it is determined that there are immediate safety factors that necessitate the newborn being placed in protective custody; and postnatal use that affects the ability of the parent to safely care for the child.

(d) Therefore, it is the intent of the Legislature that the department establish and monitor a coordinated approach to working with children and their families affected by substance abuse and dependence.

(2) SCREENING AND ASSESSMENT.—The department shall develop or adopt one or more initial screening and assessment instruments to identify, determine the needs of, and plan services for substance-exposed newborns and their families. In addition to the conditions of the infant, conditions or behaviors of the mother or father which may indicate a risk of harm to the child shall be considered during any assessment.

126346

(3) CASE MANAGEMENT.—

(a) The department shall conduct regular multidisciplinary staffings relating to services provided for substance-exposed newborns and their families to ensure that all parties possess relevant information and that services are coordinated across systems identified in this chapter. The department or community-based care lead agency, as appropriate, shall coordinate these staffings and include individuals involved in the child's care.

(b) Each region of the department and each community-based care lead agency shall jointly assess local service capacity to meet the specialized service needs of substance-exposed newborns and their families and establish a plan to develop the necessary capacity. Each plan shall be developed in consultation with entities and agencies involved in the individuals' care.

(4) TRAINING.—The department and community-based care lead agencies shall ensure that cases in which there is a substance-exposed newborn are assigned to child protective investigators and case managers who have specialized training in working with substance-exposed newborns and their families. The department and lead agencies shall ensure that child protective investigators and case managers receive this training before accepting a case when possible. If a child protective investigator or case manager with specialized training is not available, the investigator or case manager shall consult with department staff or the case management organization staff with such expertise.

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

And the title is amended as follows:

126346

Delete line 136

and insert:

cases when possible; providing for consultation;

creating s. 409.16742, F.S.; providing

414774

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Between lines 2152 and 2153
insert:

Section 42. The sum of $250,000 from nonrecurring general revenue is appropriated to the Department of Children and Families for state fiscal year 2017-2018 for the purposes of implementing a shared family care residential services pilot program in the Fourth Judicial Circuit to serve substance-exposed newborns and their families pursuant to s. 409.16742.

414774

11
12 ================ T I T L E A M E N D M E N T ================
13 And the title is amended as follows:
14 Delete line 166
15 and insert:
16 providing an appropriation; providing effective
17 dates.

By the Committees on Judiciary; and Children, Families, and Elder Affairs; and Senators Garcia and Campbell

590-04111-17 20171044c2

A bill to be entitled

An act relating to child welfare; amending s. 39.01, F.S.; defining the term "legal father" and redefining the term "parent"; amending s. 39.201, F.S.; providing that central abuse hotline information may be used for employment screening of residential group home caregivers; amending s. 39.202, F.S.; providing that confidential records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, may be accessed for employment screening of residential group home caregivers; changing the time period for the release of records to certain individuals; amending s. 39.301, F.S.; requiring a safety plan to be issued for a perpetrator of domestic violence only if the perpetrator can be located; specifying what constitutes reasonable efforts; requiring that a child new to a family under investigation be added to the investigation and assessed for safety; amending s. 39.302, F.S.; conforming a cross-reference; providing that central abuse hotline information may be used for certain employment screenings; amending s. 39.402, F.S.; requiring a court to inquire as to the identity and location of a child's legal father at the shelter hearing; specifying the types of information that fall within the scope of such inquiry; amending s. 39.503, F.S.; requiring a court to conduct under oath the

590-04111-17 20171044c2

inquiry to determine the identity or location of an unknown parent; requiring a court to seek additional information relating to a father's identity in such inquiry; requiring the diligent search to determine a parent's or prospective parent's location to include a search of the Florida Putative Father Registry; authorizing the court to order scientific testing to determine parentage if certain conditions exist; amending s. 39.504, F.S.; requiring the same judge to hear a pending dependency proceeding and an injunction proceeding; providing that the court may enter an injunction based on specified evidence; amending s. 39.507, F.S.; requiring a court to consider maltreatment allegations against a parent in an evidentiary hearing relating to a dependency petition; amending s. 39.5085, F.S.; revising eligibility guidelines for the Relative Caregiver Program with respect to relative and nonrelative caregivers; amending s. 39.521, F.S.; providing new time guidelines for filing with the court and providing copies of case plans and family functioning assessments; providing for assessment and program compliance for a parent who caused harm to a child by exposing the child to a controlled substance; providing in-home safety plan requirements; providing requirements for family functioning assessments; providing supervision requirements after reunification; amending s. 39.522, F.S.; providing conditions for returning a child to the home with an

in-home safety plan; amending s. 39.523, F.S.; providing legislative findings and intent; requiring children placed in out-of-home care to be assessed to determine the most appropriate placement; requiring the placement assessments to be documented in the Florida Safe Families Network; requiring a court to review and approve placements; requiring the Department of Children and Families to post specified information relating to assessment and placement on its website and update that information annually on specified dates; authorizing the department to adopt rules; creating s. 39.6001, F.S.; requiring the Department of Children and Families, in partnership with the Department of Health, the Agency for Health Care Administration, and other state agencies and community partners, to develop a strategy for certain coordinated services; providing for creation of a safe care plan that addresses the health and substance abuse disorder treatment needs of a newborn and affected family or caregivers and provides for the monitoring of services provided under the plan; amending s. 39.6011, F.S.; providing requirements for confidential information in a case planning conference; providing restrictions; amending s. 39.6012, F.S.; providing for assessment and program compliance for a parent who caused harm to a child by exposing the child to a controlled substance; amending s. 39.6221, F.S.; providing that relocation requirements for parents in dissolution proceedings do

not apply to certain permanent guardianships; amending s. 39.701, F.S.; providing safety assessment requirements for children coming into a home under court jurisdiction; granting rulemaking authority; amending s. 39.801, F.S.; providing an exception to the notice requirement regarding the advisory hearing for a petition to terminate parental rights; amending s. 39.803, F.S.; requiring a court to conduct under oath the inquiry to determine the identity or location of an unknown parent after the filing of a termination of parental rights petition; requiring a court to seek additional information relating to a legal father's identity in such inquiry; revising minimum requirements for the diligent search to determine the location of a parent or prospective parent; authorizing the court to order scientific testing to determine parentage if certain conditions exist; amending s. 39.806, F.S.; revising circumstances under which grounds for the termination of parental rights may be established; amending s. 39.811, F.S.; revising circumstances under which the rights of one parent may be terminated without terminating the rights of the other parent; amending s. 125.901, F.S.; creating an exception to the requirement that, for an independent special district in existence on a certain date and serving a population of a specified size, the governing body of the county submit the question of the district's retention or dissolution to the electorate in a specified general election; amending

s. 322.051, F.S., requiring that an identification card for certified unaccompanied homeless youth include a specified statement; amending s. 395.3025, F.S.; revising requirements for access to patient records; amending s. 402.40, F.S.; defining the term "child welfare trainer"; providing rulemaking authority; creating s. 409.16741, F.S.; providing legislative findings and intent; requiring the Department of Children and Families to develop or adopt one or more initial screening assessment instruments to identify and determine the needs of, and plan services for, substance-exposed newborns and their families; requiring the department to conduct certain staffings relating to services for substance-exposed newborns and their families; requiring that certain local service capacity be assessed; requiring that child protective investigators receive specialized training in working with substance-exposed newborns and their families before they accept such cases; creating s. 409.16742, F.S.; providing legislative findings and intent; establishing a shared family care residential services pilot program for substance-exposed newborns; amending s. 409.992, F.S.; limiting compensation from state-appropriated funds for administrative employees of community-based care agencies; amending s. 456.057, F.S.; revising requirements for access to patient records; repealing s. 409.141, F.S., relating to equitable reimbursement methodology; repealing s. 409.1677, F.S., relating to

model comprehensive residential services programs; amending s. 743.067, F.S.; defining the term "certified unaccompanied homeless youth"; requiring the Office on Homelessness within the Department of Children and Families to develop a standardized form to be used in the certification process; providing information that must be included in the form; authorizing a certified unaccompanied homeless youth to apply at no charge to the Department of Highway Safety and Motor Vehicles for an identification card; conforming terminology; amending s. 1009.25, F.S.; revising the exemption from the payment of tuition and fees for homeless students; amending ss. 39.524, 394.495, 409.1678, and 960.065, F.S.; conforming cross-references; amending ss. 409.1679 and 1002.3305, F.S.; conforming provisions to changes made by the act; reenacting s. 483.181(2), F.S., relating to acceptance, collection, identification, and examination of specimens, to incorporate the amendment made to s. 456.057, F.S., in a reference thereto; providing effective dates.

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

Section 1. Present subsections (35) through (80) of section 39.01, Florida Statutes, are redesignated as subsections (36) through (81), respectively, a new subsection (35) is added to that section, and subsections (10) and (32) and present subsection (49) of that section are amended, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(10) "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (48) ~~(47)~~.

(32) "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care as defined in subsection (48) ~~(47)~~.

(35) "Legal father" means a man married to the mother at the time of conception or birth of their child, unless paternity has been otherwise determined by a court of competent jurisdiction. If no man was married to the mother at the time of birth or conception of the child, the term "legal father" means a man named on the birth certificate of the child pursuant to s. 382.013(2), a man determined by a court order to be the father of the child, or a man determined by an administrative proceeding to be the father of the child.

(50)~~(49)~~ "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1). "Parent" also means a man married to the mother at the time of conception or birth of their child, unless paternity has been otherwise determined by a court of competent jurisdiction. If no man was married to the mother at the time of birth or conception of the child, the term "legal

father" means a man named on the birth certificate of the child pursuant to s. 382.013(2), a man determined by court order to be the father of the child, or a man determined by an administrative proceeding to be the father of the child. If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child. For purposes of this chapter only, when the phrase "parent or legal custodian" is used, it refers to rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless:

(a) The parental status falls within the terms of s. 39.503(1) or s. 63.062(1); or

(b) Parental status is applied for the purpose of determining whether the child has been abandoned.

Section 2. Subsection (6) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h) or s. 402.302(15). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

Pursuant to s. 39.202(2)(q), the information in the central abuse hotline may also be used by the Department of Education for purposes of educator certification discipline and review. Additionally, in accordance with s. 409.145(2)(e), the information in the central abuse hotline may be used for employment screening for caregivers at residential group homes.

Section 3. Paragraphs (a), (d), and (e) of subsection (2) of section 39.202, Florida Statutes, are amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, or county agencies responsible for carrying out:

1. Child or adult protective investigations;

2. Ongoing child or adult protective services;

3. Early intervention and prevention services;

4. Healthy Start services;

5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, family day care homes, providers who receive school readiness funding under part VI of chapter 1002, or other homes used to provide for the care and welfare of children; ~~or~~

6. Employment screening for caregivers in residential group homes; or

7.~~6.~~ Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

(d) The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings. This access shall be made available no later than 60 ~~30~~ days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(e) Any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. This access shall be made available no later than 60 ~~30~~ days after the department receives the initial report of abuse, abandonment, or neglect and, when the alleged perpetrator is not a parent, shall be limited to information involving the protective investigation only and shall not include any information relating to subsequent dependency proceedings. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

Section 4. Paragraph (a) of subsection (9) of section 39.301, Florida Statutes, is amended, and subsection (23) is added to that section, to read:

39.301 Initiation of protective investigations.—

(9)(a) For each report received from the central abuse hotline and accepted for investigation, the department or the sheriff providing child protective investigative services under s. 39.3065, shall perform the following child protective investigation activities to determine child safety:

1. Conduct a review of all relevant, available information specific to the child and family and alleged maltreatment; family child welfare history; local, state, and federal criminal records checks; and requests for law enforcement assistance provided by the abuse hotline. Based on a review of available information, including the allegations in the current report, a determination shall be made as to whether immediate consultation should occur with law enforcement, the child protection team, a domestic violence shelter or advocate, or a substance abuse or mental health professional. Such consultations should include discussion as to whether a joint response is necessary and feasible. A determination shall be made as to whether the person making the report should be contacted before the face-to-face interviews with the child and family members.

2. Conduct face-to-face interviews with the child; other siblings, if any; and the parents, legal custodians, or caregivers.

3. Assess the child's residence, including a determination of the composition of the family and household, including the name, address, date of birth, social security number, sex, and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents, legal custodians, or caregivers; and any other adults in the same household.

4. Determine whether there is any indication that any child in the family or household has been abused, abandoned, or neglected; the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse, abandonment, or neglect, including the name, address, date of birth, social security number, sex, and race of each such person.

5. Complete assessment of immediate child safety for each child based on available records, interviews, and observations with all persons named in subparagraph 2. and appropriate collateral contacts, which may include other professionals. The department's child protection investigators are hereby designated a criminal justice agency for the purpose of accessing criminal justice information to be used for enforcing this state's laws concerning the crimes of child abuse, abandonment, and neglect. This information shall be used solely for purposes supporting the detection, apprehension, prosecution, pretrial release, posttrial release, or rehabilitation of criminal offenders or persons accused of the crimes of child abuse, abandonment, or neglect and may not be further disseminated or used for any other purpose.

6. Document the present and impending dangers to each child based on the identification of inadequate protective capacity through utilization of a standardized safety assessment instrument. If present or impending danger is identified, the child protective investigator must implement a safety plan or take the child into custody. If present danger is identified and the child is not removed, the child protective investigator

shall create and implement a safety plan before leaving the home or the location where there is present danger. If impending danger is identified, the child protective investigator shall create and implement a safety plan as soon as necessary to protect the safety of the child. The child protective investigator may modify the safety plan if he or she identifies additional impending danger.

a. If the child protective investigator implements a safety plan, the plan must be specific, sufficient, feasible, and sustainable in response to the realities of the present or impending danger. A safety plan may be an in-home plan or an out-of-home plan, or a combination of both. A safety plan may include tasks or responsibilities for a parent, caregiver, or legal custodian. However, a safety plan may not rely on promissory commitments by the parent, caregiver, or legal custodian who is currently not able to protect the child or on services that are not available or will not result in the safety of the child. A safety plan may not be implemented if for any reason the parents, guardian, or legal custodian lacks the capacity or ability to comply with the plan. If the department is not able to develop a plan that is specific, sufficient, feasible, and sustainable, the department shall file a shelter petition. A child protective investigator shall implement separate safety plans for the perpetrator of domestic violence, if the investigator, using reasonable efforts, is able to locate the perpetrator to implement a safety plan, and for the parent who is a victim of domestic violence as defined in s. 741.28. Reasonable efforts to locate a perpetrator include, but are not limited to, a diligent search pursuant to the same requirements

as in s. 39.503. If the perpetrator of domestic violence is not the parent, guardian, or legal custodian of any child in the home and if the department does not intend to file a shelter petition or dependency petition that will assert allegations against the perpetrator as a parent of a child in the home ~~the child~~, the child protective investigator shall seek issuance of an injunction authorized by s. 39.504 to implement a safety plan for the perpetrator and impose any other conditions to protect the child. The safety plan for the parent who is a victim of domestic violence may not be shared with the perpetrator. If any party to a safety plan fails to comply with the safety plan resulting in the child being unsafe, the department shall file a shelter petition.

b. The child protective investigator shall collaborate with the community-based care lead agency in the development of the safety plan as necessary to ensure that the safety plan is specific, sufficient, feasible, and sustainable. The child protective investigator shall identify services necessary for the successful implementation of the safety plan. The child protective investigator and the community-based care lead agency shall mobilize service resources to assist all parties in complying with the safety plan. The community-based care lead agency shall prioritize safety plan services to families who have multiple risk factors, including, but not limited to, two or more of the following:

(I) The parent or legal custodian is of young age;

(II) The parent or legal custodian, or an adult currently living in or frequently visiting the home, has a history of substance abuse, mental illness, or domestic violence;

(III) The parent or legal custodian, or an adult currently living in or frequently visiting the home, has been previously found to have physically or sexually abused a child;

(IV) The parent or legal custodian or an adult currently living in or frequently visiting the home has been the subject of multiple allegations by reputable reports of abuse or neglect;

(V) The child is physically or developmentally disabled; or

(VI) The child is 3 years of age or younger.

c. The child protective investigator shall monitor the implementation of the plan to ensure the child's safety until the case is transferred to the lead agency at which time the lead agency shall monitor the implementation.

(23) If, at any time during a child protective investigation, a child is born into a family under investigation or a child moves into the home under investigation, the child protective investigator shall add the child to the investigation and assess the child's safety pursuant to subsection (7) and paragraph (9)(a).

Section 5. Subsections (1) and (7) of section 39.302, Florida Statutes, are amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(32) or (48) ~~s. 39.01(32) or (47)~~, acting in an official capacity, has committed an act of child

abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.201(5) and notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations or having face-to-face interviews with the child, investigation visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(7) When an investigation of institutional abuse, neglect, or abandonment is closed and a person is not identified as a

caregiver responsible for the abuse, neglect, or abandonment alleged in the report, the fact that the person is named in some capacity in the report may not be used in any way to adversely affect the interests of that person. This prohibition applies to any use of the information in employment screening, licensing, child placement, adoption, or any other decisions by a private adoption agency or a state agency or its contracted providers.

(a) However, if such a person is a licensee of the department and is named in any capacity in three or more reports within a 5-year period, the department may review those reports and determine whether the information contained in the reports is relevant for purposes of determining whether the person's license should be renewed or revoked. If the information is relevant to the decision to renew or revoke the license, the department may rely on the information contained in the report in making that decision.

(b) Likewise, if a person is employed as a caregiver in a residential group home licensed pursuant to s. 409.175 and is named in any capacity in three or more reports within a 5-year period, all reports may be reviewed for the purposes of the employment screening required pursuant to s. 409.145(2)(e).

Section 6. Paragraph (c) of subsection (8) of section 39.402, Florida Statutes, is amended to read:

39.402 Placement in a shelter.—

(8)

(c) At the shelter hearing, the court shall:

1. Appoint a guardian ad litem to represent the best interest of the child, unless the court finds that such representation is unnecessary;

2. Inform the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013; ~~and~~

3. Give the parents or legal custodians an opportunity to be heard and to present evidence; and

4. Inquire of those present at the shelter hearing as to the identity and location of the legal father. In determining who the legal father of the child may be, the court shall inquire under oath of those present at the shelter hearing whether they have any of the following information:

a. Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

b. Whether the mother was cohabiting with a male at the probable time of conception of the child.

c. Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

d. Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

e. Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child or in which the child has resided or resides.

f. Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

g. Whether a man has been determined by a court order to be the father of the child.

h. Whether a man has been determined by an administrative proceeding to be the father of the child.

Section 7. Subsections (1), (6), and (8) of section 39.503, Florida Statutes, are amended, subsection (9) is added to that section, and subsection (7) of that section is republished, to read:

39.503 Identity or location of parent unknown; special procedures.—

(1) If the identity or location of a parent is unknown and a petition for dependency or shelter is filed, the court shall conduct under oath the following inquiry of the parent or legal custodian who is available, or, if no parent or legal custodian is available, of any relative or custodian of the child who is present at the hearing and likely to have any of the following information:

(a) Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

(b) Whether the mother was cohabiting with a male at the probable time of conception of the child.

(c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

(d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

(e) Whether any man has acknowledged or claimed paternity

of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

(f) Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

(g) Whether a man has been determined by a court order to be the father of the child.

(h) Whether a man has been determined by an administrative proceeding to be the father of the child.

(6) The diligent search required by subsection (5) must include, at a minimum, inquiries of all relatives of the parent or prospective parent made known to the petitioner, inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent, inquiries of other state and federal agencies likely to have information about the parent or prospective parent, inquiries of appropriate utility and postal providers, a thorough search of at least one electronic database specifically designed for locating persons, a search of the Florida Putative Father Registry, and inquiries of appropriate law enforcement agencies. Pursuant to s. 453 of the Social Security Act, 42 U.S.C. s. 653(c)(4), the department, as the state agency administering Titles IV-B and IV-E of the act, shall be provided access to the federal and state parent locator service for diligent search activities.

(7) Any agency contacted by a petitioner with a request for information pursuant to subsection (6) shall release the requested information to the petitioner without the necessity of a subpoena or court order.

(8) If the inquiry and diligent search identifies a

prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of parenthood while the child is a dependent child but no later than at the time of or before ~~prior to~~ the adjudicatory hearing in any termination of parental rights proceeding for the child shall be considered a parent for all purposes under this section unless the other parent contests the determination of parenthood. If the prospective parent does not file a sworn affidavit of parenthood or if the other parent contests the determination of parenthood, the court may, after considering the best interest of the child, order scientific testing to determine the maternity or paternity of the child. The court shall assess the cost of the maternity or paternity determination as a cost of litigation. If the court finds the prospective parent to be a parent as a result of the scientific testing, the court shall enter a judgment of maternity or paternity, shall assess the cost of the scientific testing to the parent, and shall enter an amount of child support to be paid by the parent as determined under s. 61.30. If the known parent contests the recognition of the prospective parent as a parent, the prospective parent shall not be recognized as a parent until proceedings to determine maternity or paternity ~~under chapter 742~~ have been concluded. However, the prospective parent shall continue to receive notice of hearings as a participant until ~~pending results of the chapter 742~~ proceedings to determine maternity or paternity have been concluded.

(9) If the diligent search under subsection (5) fails to

identify and locate a prospective parent, the court shall so find and may proceed without further notice.

Section 8. Section 39.504, Florida Statutes, is amended to read:

39.504 Injunction ~~pending disposition of petition~~; penalty.—

(1) At any time after a protective investigation has been initiated pursuant to part III of this chapter, the court, upon the request of the department, a law enforcement officer, the state attorney, or other responsible person, or upon its own motion, may, if there is reasonable cause, issue an injunction to prevent any act of child abuse. Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or if there is a reasonable likelihood of such abuse occurring based upon a recent overt act or failure to act. If there is a pending dependency proceeding regarding the child whom the injunction is sought to protect, the judge hearing the dependency proceeding must also hear the injunction proceeding regarding the child.

(2) The petitioner seeking the injunction shall file a verified petition, or a petition along with an affidavit, setting forth the specific actions by the alleged offender from which the child must be protected and all remedies sought. Upon filing the petition, the court shall set a hearing to be held at the earliest possible time. Pending the hearing, the court may issue a temporary ex parte injunction, with verified pleadings or affidavits as evidence. The temporary ex parte injunction pending a hearing is effective for up to 15 days and the hearing must be held within that period unless continued for good cause

shown, which may include obtaining service of process, in which case the temporary ex parte injunction shall be extended for the continuance period. The hearing may be held sooner if the alleged offender has received reasonable notice.

(3) Before the hearing, the alleged offender must be personally served with a copy of the petition, all other pleadings related to the petition, a notice of hearing, and, if one has been entered, the temporary injunction. If the petitioner is unable to locate the alleged offender for service after a diligent search pursuant to the same requirements as in s. 39.503 and the filing of an affidavit of diligent search, the court may enter the injunction based on the sworn petition and any affidavits. At the hearing, the court may base its determination on a sworn petition, testimony, or an affidavit and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value even though it would not be competent evidence at an adjudicatory hearing. Following the hearing, the court may enter a final injunction. The court may grant a continuance of the hearing at any time for good cause shown by any party. If a temporary injunction has been entered, it shall be continued during the continuance.

(4) If an injunction is issued under this section, the primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration.

(a) The injunction applies to the alleged or actual offender in a case of child abuse or acts of domestic violence. The conditions of the injunction shall be determined by the

court, which may include ordering the alleged or actual offender to:

1. Refrain from further abuse or acts of domestic violence.

2. Participate in a specialized treatment program.

3. Limit contact or communication with the child victim, other children in the home, or any other child.

4. Refrain from contacting the child at home, school, work, or wherever the child may be found.

5. Have limited or supervised visitation with the child.

6. Vacate the home in which the child resides.

7. Comply with the terms of a safety plan implemented in the injunction pursuant to s. 39.301.

(b) Upon proper pleading, the court may award the following relief in a temporary ex parte or final injunction:

1. Exclusive use and possession of the dwelling to the caregiver or exclusion of the alleged or actual offender from the residence of the caregiver.

2. Temporary support for the child or other family members.

3. The costs of medical, psychiatric, and psychological treatment for the child incurred due to the abuse, and similar costs for other family members.

This paragraph does not preclude an adult victim of domestic violence from seeking protection for himself or herself under s. 741.30.

(c) The terms of the final injunction shall remain in effect until modified or dissolved by the court. The petitioner, respondent, or caregiver may move at any time to modify or dissolve the injunction. Notice of hearing on the motion to

modify or dissolve the injunction must be provided to all parties, including the department. The injunction is valid and enforceable in all counties in the state.

(5) Service of process on the respondent shall be carried out pursuant to s. 741.30. The department shall deliver a copy of any injunction issued pursuant to this section to the protected party or to a parent, caregiver, or individual acting in the place of a parent who is not the respondent. Law enforcement officers may exercise their arrest powers as provided in s. 901.15(6) to enforce the terms of the injunction.

(6) Any person who fails to comply with an injunction issued pursuant to this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) The person against whom an injunction is entered under this section does not automatically become a party to a subsequent dependency action concerning the same child.

Section 9. Paragraph (b) of subsection (7) of section 39.507, Florida Statutes, is amended to read:

39.507 Adjudicatory hearings; orders of adjudication.—

(7)

(b) However, the court must determine whether each parent or legal custodian identified in the case abused, abandoned, or neglected the child or engaged in conduct that placed the child at substantial risk of imminent abuse, abandonment, or neglect ~~in a subsequent evidentiary hearing~~. If a second parent is served and brought into the proceeding after the adjudication, and an ~~the~~ evidentiary hearing for the second parent is conducted ~~subsequent to the adjudication of the child~~, the court

shall supplement the adjudicatory order, disposition order, and the case plan, as necessary. The petitioner is not required to prove actual harm or actual abuse by the second parent in order for the court to make supplemental findings regarding the conduct of the second parent. The court is not required to conduct an evidentiary hearing for the second parent in order to supplement the adjudicatory order, the disposition order, and the case plan if the requirements of s. 39.506(3) or (5) are satisfied. With the exception of proceedings pursuant to s. 39.811, the child's dependency status may not be retried or readjudicated.

Section 10. Paragraph (a) of subsection (2) of section 39.5085, Florida Statutes, is amended to read:

39.5085 Relative Caregiver Program.—

(2)(a) The Department of Children and Families shall establish, ~~and~~ operate, and implement the Relative Caregiver Program ~~pursuant to eligibility guidelines established in this section as further implemented~~ by rule of the department. The Relative Caregiver Program shall, within the limits of available funding, provide financial assistance to:

1. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

2. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child, and a dependent half-

brother or half-sister of that dependent child, in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

3. Nonrelatives who are willing to assume custody and care of a dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the nonrelative caregiver under this chapter. The court must find that a proposed placement under this subparagraph is in the best interest of the child.

4. The relative or nonrelative caregiver may not receive a Relative Caregiver Program payment if the parent or stepparent of the child resides in the home. However, a relative or nonrelative may receive the Relative Caregiver Program payment for a minor parent who is in his or her care, as well as for the minor parent's child, if both children have been adjudicated dependent and meet all other eligibility requirements. If the caregiver is currently receiving the payment, the Relative Caregiver Program payment must be terminated no later than the first of the following month after the parent or stepparent moves into the home, allowing for 10-day notice of adverse action.

The placement may be court-ordered temporary legal custody to the relative or nonrelative under protective supervision of the department pursuant to s. 39.521(1)(c)3. ~~s. 39.521(1)(b)3.~~, or court-ordered placement in the home of a relative or nonrelative as a permanency option under s. 39.6221 or s. 39.6231 or under

former s. 39.622 if the placement was made before July 1, 2006. The Relative Caregiver Program shall offer financial assistance to caregivers who would be unable to serve in that capacity without the caregiver payment because of financial burden, thus exposing the child to the trauma of placement in a shelter or in foster care.

Section 11. Subsections (1), (2), (6), and (7) of section 39.521, Florida Statutes, are amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(a) A written case plan and a family functioning assessment ~~predisposition study~~ prepared by an authorized agent of the department must be approved by ~~filed with~~ the court. The department must file the case plan and the family functioning assessment with the court, serve a copy of the case plan on~~,~~ ~~served upon~~ the parents of the child, and provide a copy of the case plan ~~provided~~ to the representative of the guardian ad litem program, if the program has been appointed, and provide a copy ~~provided~~ to all other parties:

1. Not less than 72 hours before the disposition hearing, if the disposition hearing occurs on or after the 60th day after the child was placed in out-of-home care. All such case plans

must be approved by the court.

2. Not less than 72 hours before the case plan acceptance hearing, if the disposition hearing occurs before the 60th day after the date the child was placed in out-of-home care and a case plan has not been submitted pursuant to this paragraph, or if the court does not approve the case plan at the disposition hearing. ~~,~~ The case plan acceptance hearing must occur ~~the court must set a hearing~~ within 30 days after the disposition hearing to review and approve the case plan.

(b) The court may grant an exception to the requirement for a family functioning assessment ~~predisposition study~~ by separate order or within the judge's order of disposition upon finding that all the family and child information required by subsection (2) is available in other documents filed with the court.

(c) ~~(b)~~ When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation. The order may be made only upon good cause shown and pursuant to notice and procedural requirements provided under the Florida Rules of Juvenile Procedure. The mental health assessment or evaluation must be administered by a qualified professional as defined in s. 39.01, and the substance abuse assessment or evaluation must be administered by a qualified professional as defined in s. 397.311. The court may also

require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a mental health court program established under chapter 394 or a treatment-based drug court program established under s. 397.334. Adjudication of a child as dependent based upon evidence of harm as defined in s. 39.01(30)(g) demonstrates good cause, and the court shall require the parent whose actions caused the harm to submit to a substance abuse disorder assessment or evaluation and to participate and comply with treatment and services identified in the assessment or evaluation as being necessary. In addition to supervision by the department, the court, including the mental health court program or the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires mental health or substance abuse disorder treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department

in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department must set forth the powers of the custodian of the child and include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, further judicial reviews are not required if permanency has been established for the child.

(d) ~~(c)~~ At the conclusion of the disposition hearing, the court shall schedule the initial judicial review hearing which must be held no later than 90 days after the date of the disposition hearing or after the date of the hearing at which the court approves the case plan, whichever occurs earlier, but in no event shall the review hearing be held later than 6 months after the date of the child's removal from the home.

(e) ~~(d)~~ The court shall, in its written order of disposition, include all of the following:

1. The placement or custody of the child.

2. Special conditions of placement and visitation.

3. Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered.

4. The persons or entities responsible for supervising or monitoring services to the child and parent.

5. Continuation or discharge of the guardian ad litem, as appropriate.

6. The date, time, and location of the next scheduled review hearing, which must occur within the earlier of:

a. Ninety days after the disposition hearing;

b. Ninety days after the court accepts the case plan;

c. Six months after the date of the last review hearing; or

d. Six months after the date of the child's removal from his or her home, if no review hearing has been held since the child's removal from the home.

7. If the child is in an out-of-home placement, child support to be paid by the parents, or the guardian of the child's estate if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child. The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61. The state's child support enforcement agency shall enforce child support orders under this section in the same manner as child support orders under chapter 61. Placement of the child shall not be contingent upon issuance of a support order.

8.a. If the court does not commit the child to the temporary legal custody of an adult relative, legal custodian, or other adult approved by the court, the disposition order

shall include the reasons for such a decision and shall include a determination as to whether diligent efforts were made by the department to locate an adult relative, legal custodian, or other adult willing to care for the child in order to present that placement option to the court instead of placement with the department.

b. If no suitable relative is found and the child is placed with the department or a legal custodian or other adult approved by the court, both the department and the court shall consider transferring temporary legal custody to an adult relative approved by the court at a later date, but neither the department nor the court is obligated to so place the child if it is in the child's best interest to remain in the current placement.

For the purposes of this section, "diligent efforts to locate an adult relative" means a search similar to the diligent search for a parent, but without the continuing obligation to search after an initial adequate search is completed.

9. Other requirements necessary to protect the health, safety, and well-being of the child, to preserve the stability of the child's educational placement, and to promote family preservation or reunification whenever possible.

(f) ~~(e)~~ If the court finds that an in-home safety plan prepared or approved by the department ~~the prevention or reunification efforts of the department~~ will allow the child to remain safely at home or that conditions for return have been met and an in-home safety plan prepared or approved by the department will allow the child to be safely returned to the

home, the court shall allow the child to remain in or return to the home after making a specific finding of fact that ~~the reasons for removal have been remedied to the extent that~~ the child's safety, well-being, and physical, mental, and emotional health will not be endangered.

(g) ~~(f)~~ If the court places the child in an out-of-home placement, the disposition order must include a written determination that the child cannot safely remain at home with an in-home safety plan ~~reunification or family preservation services~~ and that removal of the child is necessary to protect the child. If the child is removed before the disposition hearing, the order must also include a written determination as to whether, after removal, the department made a reasonable effort to reunify the parent and child. Reasonable efforts to reunify are not required if the court finds that any of the acts listed in s. 39.806(1)(f)-(l) have occurred. The department has the burden of demonstrating that it made reasonable efforts.

1. For the purposes of this paragraph, the term "reasonable effort" means the exercise of reasonable diligence and care by the department to provide the services ordered by the court or delineated in the case plan.

2. In support of its determination as to whether reasonable efforts have been made, the court shall:

a. Enter written findings as to whether an in-home safety plan could have prevented removal ~~prevention or reunification efforts were indicated~~.

b. If an in-home safety plan was ~~prevention or reunification efforts were~~ indicated, include a brief written description of what appropriate and available safety management

services ~~prevention and reunification efforts~~ were initiated ~~made~~.

c. Indicate in writing why further efforts could or could not have prevented or shortened the separation of the parent and child.

3. A court may find that the department made a reasonable effort to prevent or eliminate the need for removal if:

a. The first contact of the department with the family occurs during an emergency;

b. The department's assessment ~~appraisal by the department~~ of the home situation indicates a substantial and immediate danger to the child's safety or physical, mental, or emotional health which cannot be mitigated by the provision of safety management ~~preventive~~ services;

c. The child cannot safely remain at home, because there are no safety management ~~preventive~~ services that can ensure the health and safety of the child or, even with appropriate and available services being provided, the health and safety of the child cannot be ensured; or

d. The parent is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights under s. 39.806(1)(f)-(l).

4. A reasonable effort by the department for reunification has been made if the appraisal of the home situation by the department indicates that the severity of the conditions of dependency is such that reunification efforts are inappropriate. The department has the burden of demonstrating to the court that reunification efforts were inappropriate.

5. If the court finds that the provision of safety

management services by ~~prevention or reunification effort of~~ the department would not have permitted the child to remain safely at home, the court may commit the child to the temporary legal custody of the department or take any other action authorized by this chapter.

(2) The family functioning assessment ~~predisposition study~~ must provide the court with the following documented information:

(a) Evidence of maltreatment and the circumstances accompanying the maltreatment.

(b) Identification of all danger threats active in the home.

(c) An assessment of the adult functioning of the parents.

(d) An assessment of general parenting practices and the parent's disciplinary approach and behavior management methods.

(e) An assessment of the parent's behavioral, emotional, and cognitive protective capacities.

(f) An assessment of child functioning.

(g) A safety analysis describing the capacity for an in-home safety plan to control the conditions that result in the child being unsafe and the specific actions necessary to keep the child safe.

(h) Identification of the conditions for return which would allow the child to be placed safely back into the home with an in-home safety plan and any safety management services necessary to ensure the child's safety.

~~(a) The capacity and disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in~~

~~lieu of medical care, and other material needs.~~

~~(b) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.~~

~~(c) The mental and physical health of the parents.~~

~~(d) The home, school, and community record of the child.~~

(i) ~~(e)~~ The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

~~(f) Evidence of domestic violence or child abuse.~~

~~(g) An assessment defining the dangers and risks of returning the child home, including a description of the changes in and resolutions to the initial risks.~~

~~(h) A description of what risks are still present and what resources are available and will be provided for the protection and safety of the child.~~

~~(i) A description of the benefits of returning the child home.~~

~~(j) A description of all unresolved issues.~~

(j) ~~(k)~~ Child welfare ~~A Florida Abuse Hotline Information System (FAHIS)~~ history from the Statewide Automated Child Welfare Information System (SACWIS) and criminal records check for all caregivers, family members, and individuals residing within the household from which the child was removed.

(k) ~~(l)~~ The complete report and recommendation of the child protection team of the Department of Health or, if no report exists, a statement reflecting that no report has been made.

(l) ~~(m)~~ All opinions or recommendations from other professionals or agencies that provide evaluative, social,

reunification, or other services to the parent and child.

(m) ~~(n)~~ A listing of appropriate and available safety management ~~prevention and reunification~~ services for the parent and child to prevent the removal of the child from the home or to reunify the child with the parent after removal and an ~~to reunify the child with the parent after removal, including the availability of family preservation services and an~~ explanation of the following:

1. If the services were or were not provided.

2. If the services were provided, the outcome of the services.

3. If the services were not provided, why they were not provided.

4. If the services are currently being provided and if they need to be continued.

~~(o) A listing of other prevention and reunification services that were available but determined to be inappropriate and why.~~

~~(p) Whether dependency mediation was provided.~~

(n) ~~(q)~~ If the child has been removed from the home and there is a parent who may be considered for custody pursuant to this section, a recommendation as to whether placement of the child with that parent would be detrimental to the child.

(o) ~~(r)~~ If the child has been removed from the home and will be remaining with a relative, parent, or other adult approved by the court, a home study report concerning the proposed placement shall be provided to the court ~~included in the predisposition report~~. Before recommending to the court any out-of-home placement for a child other than placement in a licensed shelter

or foster home, the department shall conduct a study of the home of the proposed legal custodians, which must include, at a minimum:

1. An interview with the proposed legal custodians to assess their ongoing commitment and ability to care for the child.

2. Records checks through the State Automated Child Welfare Information System (SACWIS), and local and statewide criminal and juvenile records checks through the Department of Law Enforcement, on all household members 12 years of age or older. In addition, the fingerprints of any household members who are 18 years of age or older may be submitted to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information. The department has the discretion to request State Automated Child Welfare Information System (SACWIS) and local, statewide, and national criminal history checks and fingerprinting of any other visitor to the home who is made known to the department. Out-of-state criminal records checks must be initiated for any individual who has resided in a state other than Florida if that state's laws allow the release of these records. The out-of-state criminal records must be filed with the court within 5 days after receipt by the department or its agent.

3. An assessment of the physical environment of the home.

4. A determination of the financial security of the proposed legal custodians.

5. A determination of suitable child care arrangements if the proposed legal custodians are employed outside of the home.

6. Documentation of counseling and information provided to the proposed legal custodians regarding the dependency process and possible outcomes.

7. Documentation that information regarding support services available in the community has been provided to the proposed legal custodians.

8. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

The department may not place the child or continue the placement of the child in a home under shelter or postdisposition placement if the results of the home study are unfavorable, unless the court finds that this placement is in the child's best interest.

(p) ~~(s)~~ If the child has been removed from the home, a determination of the amount of child support each parent will be required to pay pursuant to s. 61.30.

~~(t) If placement of the child with anyone other than the child's parent is being considered, the predisposition study shall include the designation of a specific length of time as to when custody by the parent will be reconsidered.~~

Any other relevant and material evidence, including other written or oral reports, may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing. Except as otherwise specifically provided, nothing in this

section prohibits the publication of proceedings in a hearing.

(6) With respect to a child who is the subject in proceedings under this chapter, the court may issue to the department an order to show cause why it should not return the child to the custody of the parents upon the presentation of evidence that the conditions for return of the child have been met ~~expiration of the case plan, or sooner if the parents have substantially complied with the case plan~~.

(7) The court may enter an order ending its jurisdiction over a child when a child has been returned to the parents, provided the court shall not terminate its jurisdiction or the department's supervision over the child until 6 months after the child's return. The department shall supervise the placement of the child after reunification for at least 6 months with each parent or legal custodian from whom the child was removed. The court shall determine whether its jurisdiction should be continued or terminated in such a case based on a report of the department or agency or the child's guardian ad litem, and any other relevant factors; if its jurisdiction is to be terminated, the court shall enter an order to that effect.

Section 12. Subsections (2) and (3) of section 39.522, Florida Statutes, are amended to read:

39.522 Postdisposition change of custody.—The court may change the temporary legal custody or the conditions of protective supervision at a postdisposition hearing, without the necessity of another adjudicatory hearing.

(2) In cases where the issue before the court is whether a child should be reunited with a parent, the court shall review the conditions for return and determine whether the

circumstances that caused the out-of-home placement and issues subsequently identified have been remedied ~~parent has substantially complied with the terms of the case plan~~ to the extent that the return of the child to the home with an in-home safety plan prepared or approved by the department will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health ~~of the child is not endangered by the return of the child to the home~~.

(3) In cases where the issue before the court is whether a child who is placed in the custody of a parent should be reunited with the other parent upon a finding that the circumstances that caused the out-of-home placement and issues subsequently identified have been remedied to the extent that the return of the child to the home of the other parent with an in-home safety plan prepared or approved by the department will not be detrimental to the child ~~of substantial compliance with the terms of the case plan~~, the standard shall be that the safety, well-being, and physical, mental, and emotional health of the child would not be endangered by reunification and that reunification would be in the best interest of the child.

Section 13. Effective January 1, 2018, section 39.523, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 39.523, F.S., for present text.)

39.523 Placement in out-of-home care.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that it is a basic tenet of child welfare practice and the law that children be placed in the least restrictive, most family-like setting available in close

proximity to the home of their parents, consistent with the best interests and needs of the child, and that children be placed in permanent homes in a timely manner.

(b) The Legislature also finds that there is an association between frequent placement changes and adverse outcomes for the child, that mismatching placements to children's needs has been identified as a factor that negatively impacts placement stability, and that identifying the right placement for each child requires effective assessment.

(c) It is the intent of the Legislature that whenever a child is unable to safely remain at home with a parent, the most appropriate available out-of-home placement shall be chosen after an assessment of the child's needs and the availability of caregivers qualified to meet the child's needs.

(2) ASSESSMENT AND PLACEMENT.—When any child is removed from a home and placed into out-of-home care, a comprehensive placement assessment process shall be completed to determine the level of care needed by the child and match the child with the most appropriate placement.

(a) The community-based care lead agency or sub-contracted agency with the responsibility for assessment and placement must coordinate a multi-disciplinary team staffing with any available individual currently involved with the child including, but not limited to, a representative from the department and the case manager for the child; a therapist, attorney ad-litem, guardian ad litem, teachers, coaches, Children's Medical Services; and other community providers of services to the child or stakeholders as applicable. The team should also include clergy, relatives and fictive kin. Team participants must gather data

and information on the child that is known at the time including, but not limited to:

1. Mental, medical, behavioral health and medication history;

2. Community ties and school placement;

3. Current placement decisions relating to any siblings;

4. Alleged type of abuse or neglect including sexual abuse and trafficking history; and

5. The child's age, maturity, strengths, hobbies or activities, and the child's preference for placement.

(b) The comprehensive placement assessment process may also include the use of an assessment instrument or tool that is best suited for the individual child.

(c) The most appropriate available out-of-home placement shall be chosen after consideration by all members of the multi-disciplinary team of all of the information and data gathered, including the results and recommendations of any evaluations conducted.

(d) Placement decisions for each child in out-of-home placement must be reviewed as often as necessary to ensure that permanency issues related to this population of children are addressed.

(e) The department shall document all placement assessments and placement decisions in the Florida Safe Families Network.

(f) If it is determined during the comprehensive placement assessment process that residential treatment as defined in s. 39.407 would be suitable for the child, the procedures in that section must be followed.

(3) JUDICIAL REVIEW.—At each judicial review, the court

shall consider the results of the assessment, the placement decision made for the child, and the services provided to the child as required under s. 39.701.

(4) DATA COLLECTION.—The department shall collect the following information by community-based care lead agency and post it on the Department of Children and Families' website. The information must be updated on January 1 and July 1 of each year.

(a) The number of children placed with relatives and nonrelatives, in family foster homes, and in residential group care.

(b) An inventory of available services that are necessary to maintain children in the least restrictive settings and a plan for filling any identified gap in those services.

(c) The number of children who were placed based upon the assessment.

(d) An inventory of existing placements for children by type and by community-based care lead agency.

(e) The strategies being used by community-based care lead agencies to recruit, train, and support an adequate number of families to provide home-based family care.

(5) RULEMAKING.—The department may adopt rules necessary to carry out the provisions of this section.

Section 14. Section 39.6001, Florida Statutes, is created to read:

39.6001 Safe care plans for substance-exposed newborns.—The department, in partnership with the Department of Health, the Agency for Health Care Administration, other state agencies, and community partners, shall develop a strategy for coordinated

services to ensure the safety and well-being of newborns with prenatal substance exposure by creating, implementing, and monitoring safe care plans. A safe care plan is a written plan for a newborn with prenatal substance abuse exposure following the newborn's release from the care of a health care provider. The plan must address the health and substance abuse disorder treatment needs of the newborn through infancy and the affected family or caregiver. The department shall monitor such plans to ensure appropriate referrals are made and services are delivered to the newborn and the affected family or caregiver.

Section 15. Subsection (1) of section 39.6011, Florida Statutes, is amended to read:

39.6011 Case plan development.—

(1) The department shall prepare a draft of the case plan for each child receiving services under this chapter. A parent of a child may not be threatened or coerced with the loss of custody or parental rights for failing to admit in the case plan of abusing, neglecting, or abandoning a child. Participating in the development of a case plan is not an admission to any allegation of abuse, abandonment, or neglect, and it is not a consent to a finding of dependency or termination of parental rights. The case plan shall be developed subject to the following requirements:

(a) The case plan must be developed in a face-to-face conference with the parent of the child, any court-appointed guardian ad litem, and, if appropriate, the child and the temporary custodian of the child.

(b) Notwithstanding s. 39.202, the department may discuss confidential information during the case planning conference in

the presence of individuals who participate in the conference. All individuals who participate in the conference shall maintain the confidentiality of all information shared during the case planning conference.

(c) ~~(b)~~ The parent may receive assistance from any person or social service agency in preparing the case plan. The social service agency, the department, and the court, when applicable, shall inform the parent of the right to receive such assistance, including the right to assistance of counsel.

(d) ~~(c)~~ If a parent is unwilling or unable to participate in developing a case plan, the department shall document that unwillingness or inability to participate. The documentation must be provided in writing to the parent when available for the court record, and the department shall prepare a case plan conforming as nearly as possible with the requirements set forth in this section. The unwillingness or inability of the parent to participate in developing a case plan does not preclude the filing of a petition for dependency or for termination of parental rights. The parent, if available, must be provided a copy of the case plan and be advised that he or she may, at any time before the filing of a petition for termination of parental rights, enter into a case plan and that he or she may request judicial review of any provision of the case plan with which he or she disagrees at any court hearing set for the child.

Section 16. Subsection (1) of section 39.6012, Florida Statutes, is amended to read:

39.6012 Case plan tasks; services.—

(1) The services to be provided to the parent and the tasks that must be completed are subject to the following:

(a) The services described in the case plan must be designed to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement. The services offered must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care.

(b) The case plan must describe each of the tasks with which the parent must comply and the services to be provided to the parent, specifically addressing the identified problem, including:

1. The type of services or treatment.

2. The date the department will provide each service or referral for the service if the service is being provided by the department or its agent.

3. The date by which the parent must complete each task.

4. The frequency of services or treatment provided. The frequency of the delivery of services or treatment provided shall be determined by the professionals providing the services or treatment on a case-by-case basis and adjusted according to their best professional judgment.

5. The location of the delivery of the services.

6. The staff of the department or service provider accountable for the services or treatment.

7. A description of the measurable objectives, including the timeframes specified for achieving the objectives of the

case plan and addressing the identified problem.

(c) If there is evidence of harm as defined in s. 39.01(30)(g), the case plan must include as a required task for the parent whose actions caused the harm that the parent submit to a substance abuse disorder assessment or evaluation and participate and comply with treatment and services identified in the assessment or evaluation as being necessary.

Section 17. Subsection (7) is added to section 39.6221, Florida Statutes, to read:

39.6221 Permanent guardianship of a dependent child.—

(7) The requirements of s. 61.13001 do not apply to permanent guardianships established under this section.

Section 18. Paragraph (h) is added to subsection (1) of section 39.701, Florida Statutes, to read:

39.701 Judicial review.—

(1) GENERAL PROVISIONS.—

(h) If a child is born into a family that is under the court's jurisdiction or a child moves into a home that is under the court's jurisdiction, the department shall assess the child's safety and provide notice to the court.

1. The department shall complete an assessment to determine how the addition of a child will impact family functioning. The assessment must be completed at least 30 days before a child is expected to be born or to move into a home, or within 72 hours after the department learns of the pregnancy or addition if the child is expected to be born or to move into the home in less than 30 days. The assessment shall be filed with the court.

2. Once a child is born into a family or a child moves into the home, the department shall complete a progress update and

file it with the court.

3. The court has the discretion to hold a hearing on the progress update filed by the department.

4. The department shall adopt rules to implement this subsection.

Section 19. Subsection (3) of section 39.801, Florida Statutes, is amended to read:

39.801 Procedures and jurisdiction; notice; service of process.—

(3) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:

(a) Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights and a copy of the petition must be personally served upon the following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.

2. The legal custodians of the child.

3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.

4. Any person who has physical custody of the child.

5. Any grandparent entitled to priority for adoption under s. 63.0425.

6. Any prospective parent who has been identified under s. 39.503 or s. 39.803, unless a court order has been entered pursuant to s. 39.503(4) or (9) or s. 39.803(4) or (9) which indicates no further notice is required. Except as otherwise

provided in this section, if there is not a legal father, notice of the petition for termination of parental rights must be provided to any known prospective father who is identified under oath before the court or who is identified by a diligent search of the Florida Putative Father Registry. Service of the notice of the petition for termination of parental rights is not required if the prospective father executes an affidavit of nonpaternity or a consent to termination of his parental rights which is accepted by the court after notice and opportunity to be heard by all parties to address the best interests of the child in accepting such affidavit.

7. The guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed.

The document containing the notice to respond or appear must contain, in type at least as large as the type in the balance of the document, the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS NOTICE."

(b) If a party required to be served with notice as prescribed in paragraph (a) cannot be served, notice of hearings must be given as prescribed by the rules of civil procedure, and service of process must be made as specified by law or civil actions.

(c) Notice as prescribed by this section may be waived, in the discretion of the judge, with regard to any person to whom notice must be given under this subsection if the person executes, before two witnesses and a notary public or other officer authorized to take acknowledgments, a written surrender of the child to a licensed child-placing agency or the department.

(d) If the person served with notice under this section fails to personally appear at the advisory hearing, the failure to personally appear shall constitute consent for termination of parental rights by the person given notice. If a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of said hearing, then failure of that parent to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights.

Section 20. Section 39.803, Florida Statutes, is amended to read:

39.803 Identity or location of parent unknown after filing of termination of parental rights petition; special procedures.—

(1) If the identity or location of a parent is unknown and a petition for termination of parental rights is filed, the court shall conduct under oath the following inquiry of the parent who is available, or, if no parent is available, of any relative, caregiver, or legal custodian of the child who is present at the hearing and likely to have the information:

(a) Whether the mother of the child was married at the probable time of conception of the child or at the time of birth

of the child.

(b) Whether the mother was cohabiting with a male at the probable time of conception of the child.

(c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

(d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

(e) Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

(f) Whether a man is named on the birth certificate of the child pursuant to s. 382.013(2).

(g) Whether a man has been determined by a court order to be the father of the child.

(h) Whether a man has been determined by an administrative proceeding to be the father of the child.

(2) The information required in subsection (1) may be supplied to the court or the department in the form of a sworn affidavit by a person having personal knowledge of the facts.

(3) If the inquiry under subsection (1) identifies any person as a parent or prospective parent, the court shall require notice of the hearing to be provided to that person.

(4) If the inquiry under subsection (1) fails to identify any person as a parent or prospective parent, the court shall so find and may proceed without further notice.

(5) If the inquiry under subsection (1) identifies a parent

or prospective parent, and that person's location is unknown, the court shall direct the petitioner to conduct a diligent search for that person before scheduling an adjudicatory hearing regarding the petition for termination of parental rights to the child unless the court finds that the best interest of the child requires proceeding without actual notice to the person whose location is unknown.

(6) The diligent search required by subsection (5) must include, at a minimum, inquiries of all known relatives of the parent or prospective parent, inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent, inquiries of other state and federal agencies likely to have information about the parent or prospective parent, inquiries of appropriate utility and postal providers, a thorough search of at least one electronic database specifically designed for locating persons, a search of the Florida Putative Father Registry, and inquiries of appropriate law enforcement agencies. Pursuant to s. 453 of the Social Security Act, 42 U.S.C. s. 653(c)(4), the department, as the state agency administering Titles IV-B and IV-E of the act, shall be provided access to the federal and state parent locator service for diligent search activities.

(7) Any agency contacted by petitioner with a request for information pursuant to subsection (6) shall release the requested information to the petitioner without the necessity of a subpoena or court order.

(8) If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn

affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of parenthood while the child is a dependent child but no later than at the time of or before ~~prior to~~ the adjudicatory hearing in the termination of parental rights proceeding for the child shall be considered a parent for all purposes under this section. If the prospective parent does not file a sworn affidavit of parenthood or if the other parent contests the determination of parenthood, the court may, after considering the best interests of the child, order scientific testing to determine the maternity or paternity of the child. The court shall assess the cost of the paternity determination as a cost of litigation. If the court finds the prospective parent to be a parent as a result of the scientific testing, the court shall enter a judgment of maternity or paternity, shall assess the cost of the scientific testing to the parent, and shall enter an amount of child support to be paid by the parent as determined under s. 61.30. If the known parent contests the recognition of the prospective parent as a parent, the prospective parent may not be recognized as a parent until proceedings to establish maternity or paternity have been concluded. However, the prospective parent shall continue to receive notice of hearings as a participant until proceedings to establish maternity or paternity have been concluded.

(9) If the diligent search under subsection (5) fails to identify and locate a prospective parent, the court shall so find and may proceed without further notice.

Section 21. Paragraph (l) of subsection (1) of section 39.806, Florida Statutes, is amended, and subsections (2) and

(3) are republished, to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(l) On three or more occasions the child or another child of the parent or parents has been placed in out-of-home care pursuant to this chapter or the law of any state, territory, or jurisdiction of the United States which is substantially similar to this chapter, and the conditions that led to the child's out-of-home placement were caused by the parent or parents.

(2) Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(b)-(d) or paragraphs (1)(f)-(m) have occurred.

(3) If a petition for termination of parental rights is filed under subsection (1), a separate petition for dependency need not be filed and the department need not offer the parents a case plan having a goal of reunification, but may instead file with the court a case plan having a goal of termination of parental rights to allow continuation of services until the termination is granted or until further orders of the court are issued.

Section 22. Subsection (6) of section 39.811, Florida Statutes, is amended to read:

39.811 Powers of disposition; order of disposition.—

(6) The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances:

(a) If the child has only one surviving parent;

(b) If the identity of a prospective parent has been established as unknown after sworn testimony;

(c) If the parent whose rights are being terminated became a parent through a single-parent adoption;

(d) If the protection of the child demands termination of the rights of a single parent; or

(e) If the parent whose rights are being terminated meets any of the criteria specified in s. 39.806(1)(c), (d), (f), (g), (h), (i), (j), (k), (l), (m), or (n) ~~and (f)-(m)~~.

Section 23. Paragraph (b) of subsection (4) of section 125.901, Florida Statutes, is amended to read:

125.901 Children's services; independent special district; council; powers, duties, and functions; public records exemption.—

(4)

(b)1.a. Notwithstanding paragraph (a), the governing body of the county shall submit the question of retention or dissolution of a district with voter-approved taxing authority to the electorate in the general election according to the following schedule:

(I) For a district in existence on July 1, 2010, and serving a county with a population of 400,000 or fewer persons as of that date.....2014.

(II) For a district in existence on July 1, 2010, and serving a county with a population of 2 million or more persons as of that date, unless the governing body of the county has previously submitted such question voluntarily to the electorate for a second time since 2005,.....2020.

b. A referendum by the electorate on or after July 1, 2010,

creating a new district with taxing authority may specify that the district is not subject to reauthorization or may specify the number of years for which the initial authorization shall remain effective. If the referendum does not prescribe terms of reauthorization, the governing body of the county shall submit the question of retention or dissolution of the district to the electorate in the general election 12 years after the initial authorization.

2. The governing body of the district may specify, and submit to the governing body of the county no later than 9 months before the scheduled election, that the district is not subsequently subject to reauthorization or may specify the number of years for which a reauthorization under this paragraph shall remain effective. If the governing body of the district makes such specification and submission, the governing body of the county shall include that information in the question submitted to the electorate. If the governing body of the district does not specify and submit such information, the governing body of the county shall resubmit the question of reauthorization to the electorate every 12 years after the year prescribed in subparagraph 1. The governing body of the district may recommend to the governing body of the county language for the question submitted to the electorate.

3. Nothing in this paragraph limits the authority to dissolve a district as provided under paragraph (a).

4. Nothing in this paragraph precludes the governing body of a district from requesting that the governing body of the county submit the question of retention or dissolution of a district with voter-approved taxing authority to the electorate

at a date earlier than the year prescribed in subparagraph 1. If the governing body of the county accepts the request and submits the question to the electorate, the governing body satisfies the requirement of that subparagraph.

If any district is dissolved pursuant to this subsection, each county must first obligate itself to assume the debts, liabilities, contracts, and outstanding obligations of the district within the total millage available to the county governing body for all county and municipal purposes as provided for under s. 9, Art. VII of the State Constitution. Any district may also be dissolved pursuant to part VII of chapter 189.

Section 24. Subsection (9) of section 322.051, Florida Statutes, is amended to read:

322.051 Identification cards.—

(9)(a) Notwithstanding any other provision of this section or s. 322.21 to the contrary, the department shall issue or renew a card at no charge to a person who presents evidence satisfactory to the department that he or she is homeless as defined in s. 414.0252(7), to a juvenile offender who is in the custody or under the supervision of the Department of Juvenile Justice and receiving services pursuant to s. 985.461, to an inmate receiving a card issued pursuant to s. 944.605(7), or, if necessary, to an inmate receiving a replacement card if the department determines that he or she has a valid state identification card. If the replacement state identification card is scheduled to expire within 6 months, the department may also issue a temporary permit valid for at least 6 months after the release date. The department's mobile issuing units shall

process the identification cards for juvenile offenders and inmates at no charge, as provided by s. 944.605 (7)(a) and (b).

(b) If the person who presents evidence that he or she is a certified unaccompanied homeless youth as defined in s. 743.067, the back of the card must exhibit the following: As a certified unaccompanied homeless youth, this individual may consent to diagnosis and treatment and any forensic medical examination authorized pursuant to s. 743.067, F.S.

Section 25. Paragraph (g) of subsection (4) of section 395.3025, Florida Statutes, is amended, and subsection (8) of that section is republished, to read:

395.3025 Patient and personnel records; copies; examination.—

(4) Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative, but appropriate disclosure may be made without such consent to:

(g) The Department of Children and Families, ~~or~~ its agent, or its contracted entity, for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults.

(8) Patient records at hospitals and ambulatory surgical centers are exempt from disclosure under s. 119.07(1), except as provided by subsections (1)-(5).

Section 26. Subsections (2) and (6) of section 402.40, Florida Statutes, are amended to read:

402.40 Child welfare training and certification.—

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

(a) "Child welfare certification" means a professional

credential awarded by a department-approved third-party credentialing entity to individuals demonstrating core competency in any child welfare practice area.

(b) "Child welfare services" means any intake, protective investigations, preprotective services, protective services, foster care, shelter and group care, and adoption and related services program, including supportive services and supervision provided to children who are alleged to have been abused, abandoned, or neglected or who are at risk of becoming, are alleged to be, or have been found dependent pursuant to chapter 39.

(c) "Child welfare trainer" means any person providing training for the purposes of child welfare professionals earning certification.

(d) ~~(c)~~ "Core competency" means the minimum knowledge, skills, and abilities necessary to carry out work responsibilities.

(e) ~~(d)~~ "Person providing child welfare services" means a person who has a responsibility for supervisory, direct care, or support-related work in the provision of child welfare services pursuant to chapter 39.

(f) ~~(e)~~ "Preservice curriculum" means the minimum statewide training content based upon the core competencies which is made available to all persons providing child welfare services.

(g) ~~(f)~~ "Third-party credentialing entity" means a department-approved nonprofit organization that has met nationally recognized standards for developing and administering professional certification programs.

(6) ADOPTION OF RULES.—The Department of Children and

Families shall adopt rules necessary to carry out ~~the provisions of~~ this section, including the requirements for child welfare trainers.

Section 27. Section 409.16741, Florida Statutes, is created to read:

409.16741 Substance-exposed newborns; legislative findings and intent; screening and assessment; case management; training.—

(1) LEGISLATIVE FINDINGS AND INTENT.-

(a) The Legislature finds that children, their families, and child welfare agencies have been affected by multiple substance abuse epidemics over the past several decades, and parental substance abuse is again becoming a growing reason for removing children from their homes and placing them in foster care.

(b) The Legislature also finds that infants are the largest age group of children entering foster care and that parental substance abuse disorders are having a major impact not only on increasing child removals, but also on preventing or delaying reunification of families and increasing termination of parental rights.

(c) The Legislature further finds that two aspects of parental substance abuse affect the child welfare system: prenatal exposure when it is determined that there are immediate safety factors that necessitate the newborn being placed in protective custody; and postnatal use that affects the ability of the parent to safely care for the child.

(d) Therefore, it is the intent of the Legislature that the department establish and monitor a coordinated approach to

working with children and their families affected by substance abuse and dependence.

(2) SCREENING AND ASSESSMENT.—The department shall develop or adopt one or more initial screening and assessment instruments to identify, determine the needs of, and plan services for substance-exposed newborns and their families. In addition to the conditions of the infant, conditions or behaviors of the mother or father which may indicate a risk of harm to the child shall be considered during any assessment.

(3) CASE MANAGEMENT.—

(a) The department shall conduct regular multidisciplinary staffings relating to services provided for substance-exposed newborns and their families to ensure that all parties possess relevant information and that services are coordinated across systems identified in this chapter. The department or community-based care lead agency, as appropriate, shall coordinate these staffings and include individuals involved in the child's care.

(b) Each region of the department and each community-based care lead agency shall jointly assess local service capacity to meet the specialized service needs of substance-exposed newborns and their families and establish a plan to develop the necessary capacity. Each plan shall be developed in consultation with entities and agencies involved in the individuals' care.

(4) TRAINING.—The department and community-based care lead agencies shall ensure that cases in which there is a substance-exposed newborn are assigned to child protective investigators and case managers who have specialized training in working with substance-exposed newborns and their families. The department and lead agencies shall ensure that child protective

investigators and case managers receive this training before accepting a case.

Section 28. Section 409.16742, Florida Statutes, is created to read:

409.16742 Shared family care residential services program for substance-exposed newborns.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is evidence that, with appropriate support and training, some families can remain safely together without court involvement or traumatic separations. Therefore, it is the intent of the Legislature that alternative types of placement options be available which provide both safety for substance-exposed newborns and an opportunity for parents recovering from substance abuse disorders to achieve independence while living together in a protective, nurturing family environment.

(2) ESTABLISHMENT OF PILOT PROGRAM.—The department shall establish a shared family care residential services program in the Fourth Judicial Circuit to serve substance-exposed newborns and their families through a contract with the designated lead agency established in accordance with s. 409.987 or with a private entity capable of providing residential care that satisfies the requirements of this section. The private entity or lead agency is responsible for all programmatic functions necessary to carry out the intent of this section. As used in this section, the term "shared family care" means out-of-home care in which an entire family in need is temporarily placed in the home of a family who is trained to mentor and support the biological parents as they develop caring skills and supports necessary for independent living.

(3) SERVICES.—The department shall specify services that should be made available to newborns and their families through the pilot program.

Section 29. Section 409.992, Florida Statutes, is amended to read:

409.992 Lead agency expenditures.—

(1) The procurement of commodities or contractual services by lead agencies shall be governed by the financial guidelines developed by the department and must comply with applicable state and federal law and follow good business practices. Pursuant to s. 11.45, the Auditor General may provide technical advice in the development of the financial guidelines.

(2) Notwithstanding any other provision of law, a community-based care lead agency may make expenditures for staff cellular telephone allowances, contracts requiring deferred payments and maintenance agreements, security deposits for office leases, related agency professional membership dues other than personal professional membership dues, promotional materials, and grant writing services. Expenditures for food and refreshments, other than those provided to clients in the care of the agency or to foster parents, adoptive parents, and caseworkers during training sessions, are not allowable.

(3) Notwithstanding any other provision of law, a community-based care lead agency administrative employee may not receive a salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of the salary paid to the secretary of the Department of Children and Families from state-appropriated funds, including state-appropriated federal funds. This subsection does not prohibit any party from providing cash

that is not from appropriated state funds to a community-based care lead agency administrative employee.

(4)~~(3)~~ A lead community-based care agency and its subcontractors are exempt from state travel policies as provided in s. 112.061(3)(a) for their travel expenses incurred in order to comply with the requirements of this section.

Section 30. Paragraph (a) of subsection (7) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information.—

(7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient. However, such records may be furnished without written authorization under the following circumstances:

1. To any person, firm, or corporation that has procured or furnished such care or treatment with the patient's consent.

2. When compulsory physical examination is made pursuant to Rule 1.360, Florida Rules of Civil Procedure, in which case copies of the medical records shall be furnished to both the defendant and the plaintiff.

3. In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the patient or the patient's legal representative by the party seeking such

records.

4. For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient or provided written permission is received from the patient or the patient's legal representative.

5. To a regional poison control center for purposes of treating a poison episode under evaluation, case management of poison cases, or compliance with data collection and reporting requirements of s. 395.1027 and the professional organization that certifies poison control centers in accordance with federal law.

6. To the Department of Children and Families, its agent, or its contracted entity, for the purpose of investigations of or services for cases of abuse, neglect, or exploitation of children or vulnerable adults.

Section 31. Section 409.141, Florida Statutes, is repealed.

Section 32. Section 409.1677, Florida Statutes, is repealed.

Section 33. Section 743.067, Florida Statutes, is amended to read:

743.067 Certified unaccompanied homeless youths.—

(1) For purposes of this section, the term ~~an~~ "certified unaccompanied homeless youth" means a minor who is a homeless child or youth, including an unaccompanied youth, as those terms are defined in 42 U.S.C. s. 11434a., who has been certified as a unaccompanied homeless youth by ~~is an individual who is 16 years of age or older and is~~:

(a) A school district homeless liaison;

~~(a) Found by a school district's liaison for homeless~~

~~children and youths to be an unaccompanied homeless youth eligible for services pursuant to the McKinney-Vento Homeless Assistance Act, 42 U.S.C. ss. 11431-11435; or~~

~~(b) Believed to qualify as an unaccompanied homeless youth, as that term is defined in the McKinney-Vento Homeless Assistance Act, by:~~

(b)~~1.~~ The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director's designee;

(c)~~2.~~ The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director's designee; or

(d) A Continuum of Care Lead Agency, or its designee.

~~3. A clinical social worker licensed under chapter 491; or~~

~~4. A circuit court.~~

(2)(a) The Office on Homelessness within the Department of Children and Families shall develop a standardized form that must be used by the entities specified in subsection (1) to certify qualifying unaccompanied homeless youth. The form must include the circumstances that qualify the youth; the date the youth was certified; the name, title, and signature of the certifying individual; and a citation to this section. ~~A minor who qualifies as an unaccompanied homeless youth shall be issued a written certificate documenting his or her status by the appropriate individual as provided in subsection (1). The certificate shall be issued on the official letterhead stationery of the person making the determination and shall include the date of the finding, a citation to this section, and~~

~~the signature of the individual making the finding.~~

(b) A certified unaccompanied homeless youth may use the completed form to apply at no charge for an identification card issued by the Department of Highway Safety and Motor Vehicles pursuant to s. 322.051(9).

(c) A health care provider may accept the written certificate or identification card as proof of the minor's status as a certified ~~an~~ unaccompanied homeless youth and may keep a copy of the certificate or identification card in the youth's medical file.

(3) A certified ~~an~~ unaccompanied homeless youth may:

(a) Petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a person not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.

(b) Notwithstanding s. 394.4625(1), consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397 and any forensic medical examination for the purpose of investigating any felony offense under chapter 784, chapter 787, chapter 794, chapter 800, or chapter 827, for:

1. Himself or herself; or

2. His or her child, if the certified unaccompanied homeless youth is unmarried, is the parent of the child, and has actual custody of the child.

(4) This section does not affect the requirements of s. 390.01114.

Section 34. Paragraph (f) of subsection (1) of section

1009.25, Florida Statutes, is amended to read:

1009.25 Fee exemptions.—

(1) The following students are exempt from the payment of tuition and fees, including lab fees, at a school district that provides workforce education programs, Florida College System institution, or state university:

(f) A student who lacks a fixed, regular, and adequate nighttime residence or whose primary nighttime residence is a public or private shelter designed to provide temporary residence, a public or private transitional living program ~~for individuals intended to be institutionalized~~, or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This includes a student who, if it were not for the availability of college or university dormitory housing, would be homeless.

Section 35. Subsection (1) of section 39.524, Florida Statutes, is amended to read:

39.524 Safe-harbor placement.—

(1) Except as provided in s. 39.407 or s. 985.801, a dependent child 6 years of age or older who has been found to be a victim of sexual exploitation as defined in s. 39.01 ~~s. 39.01(70)(g)~~ must be assessed for placement in a safe house or safe foster home as provided in s. 409.1678 using the initial screening and assessment instruments provided in s. 409.1754(1). If such placement is determined to be appropriate for the child as a result of this assessment, the child may be placed in a safe house or safe foster home, if one is available. However, the child may be placed in another setting, if the other setting is more appropriate to the child's needs or if a safe house or

safe foster home is unavailable, as long as the child's behaviors are managed so as not to endanger other children served in that setting.

Section 36. Paragraph (p) of subsection (4) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(4) The array of services may include, but is not limited to:

(p) Trauma-informed services for children who have suffered sexual exploitation as defined in s. 39.01 ~~s. 39.01(70)(g)~~.

Section 37. Paragraph (c) of subsection (1) and paragraphs (a) and (b) of subsection (6) of section 409.1678, Florida Statutes, are amended to read:

409.1678 Specialized residential options for children who are victims of sexual exploitation.—

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

(c) "Sexually exploited child" means a child who has suffered sexual exploitation as defined in s. 39.01 ~~s. 39.01(70)(g)~~ and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

(6) LOCATION INFORMATION.—

(a) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01 ~~s. 39.01(70)(g)~~, which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such

confidential and exempt information held by an agency before, on, or after the effective date of the exemption.

(b) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01 ~~s. 39.01(70)(g)~~, may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations in the safe house, safe foster home, or other residential facility.

Section 38. Subsection (5) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01 ~~s. 39.01(70)(g)~~.

Section 39. Section 409.1679, Florida Statutes, is amended to read:

409.1679 Additional requirements; reimbursement methodology.—

(1) Each program established under s. 409.1676 ~~ss. 409.1676 and 409.1677~~ must meet the following expectations, which must be included in its contracts with the department or lead agency:

(a) No more than 10 percent of the children served may move from one living environment to another, unless the child is returned to family members or is moved, in accordance with the treatment plan, to a less-restrictive setting. Each child must have a comprehensive transitional plan that identifies the child's living arrangement upon leaving the program and specific

steps and services that are being provided to prepare for that arrangement. Specific expectations as to the time period necessary for the achievement of these permanency goals must be included in the contract.

(b) Each child must receive a full academic year of appropriate educational instruction. No more than 10 percent of the children may be in more than one academic setting in an academic year, unless the child is being moved, in accordance with an educational plan, to a less-restrictive setting. Each child must demonstrate academic progress and must be performing at grade level or at a level commensurate with a valid academic assessment.

(c) Siblings must be kept together in the same living environment 100 percent of the time, unless that is determined by the provider not to be in the children's best interest. When siblings are separated in placement, the decision must be reviewed and approved by the court within 30 days.

(d) The program must experience a caregiver turnover rate and an incidence of child runaway episodes which are at least 50 percent below the rates experienced in the rest of the state.

(e) In addition to providing a comprehensive assessment, the program must provide, 100 percent of the time, any or all of the following services that are indicated through the assessment: residential care; transportation; behavioral health services; recreational activities; clothing, supplies, and miscellaneous expenses associated with caring for these children; necessary arrangements for or provision of educational services; and necessary and appropriate health and dental care.

(f) The children who are served in this program must be

satisfied with the services and living environment.

(g) The caregivers must be satisfied with the program.

(2) ~~Notwithstanding the provisions of s. 409.141,~~ The Department of Children and Families shall fairly and reasonably reimburse the programs established under s. 409.1676 ~~ss. 409.1676 and 409.1677~~ based on a prospective per diem rate, which must be specified annually in the General Appropriations Act. Funding for these programs shall be made available from resources appropriated and identified in the General Appropriations Act.

Section 40. Subsection (11) of section 1002.3305, Florida Statutes, is amended to read:

1002.3305 College-Preparatory Boarding Academy Pilot Program for at-risk students.—

(11) STUDENT HOUSING.—Notwithstanding s. 409.176 ~~ss. 409.1677(3)(d) and 409.176~~ or any other provision of law, an operator may house and educate dependent, at-risk youth in its residential school for the purpose of facilitating the mission of the program and encouraging innovative practices.

Section 41. For the purpose of incorporating the amendment made by this act to section 456.057, Florida Statutes, in a reference thereto, subsection (2) of section 483.181, Florida Statutes, is reenacted to read:

483.181 Acceptance, collection, identification, and examination of specimens.—

(2) The results of a test must be reported directly to the licensed practitioner or other authorized person who requested it, and appropriate disclosure may be made by the clinical laboratory without a patient's consent to other health care

practitioners and providers involved in the care or treatment of the patient as specified in s. 456.057(7)(a). The report must include the name and address of the clinical laboratory in which the test was actually performed, unless the test was performed in a hospital laboratory and the report becomes an integral part of the hospital record.

Section 42. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2017.

Please reply to:

District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

The Florida Senate

State Senator René García
36th District

April 19th, 2017

The Honorable Jack Latvala
Chairman, Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latvala,

Please have this letter serve as my formal request to have **SB 1044: Child Welfare** be heard during the next scheduled Appropriations Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

State Senator René García
District 36

CC: Mike Hansen
Alicia Weiss

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Topic _____ Bill Number 1044 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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.

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

S-001 (10/20/11)

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

1044
Bill Number (if applicable)

Topic CHILD WELFARE

Amendment Barcode (if applicable)

Name DIANA RAGBEER

Job Title DIRECTOR PUBLIC POLICY

Address 3150 SW 3RD AVE
Street

Phone 305 571 5700

MIAMI FL 33129
City *State* *Zip*

Email diana@thechildrenstrust.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing THE CHILDREN'S 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

APPEARANCE RECORD

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

25 Apr 17
Meeting Date

1044
Bill Number (if applicable)

Topic Child Welfare

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall 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 Fla. Smart Justice 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.

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 1056
INTRODUCER:	Senator Garcia
SUBJECT:	Home Health Care Agency Licenses
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Favorable**
2.	Forbes	Williams	AHS	**Recommend: Favorable**
3.	Forbes	Hansen	AP	**Favorable**

I. Summary:

SB 1056 removes a prohibition on the Agency for Health Care Administration (AHCA) from issuing an initial home health agency license to an applicant that shares common controlling interests with another licensed home health agency that is located in the same county and within 10 miles of the applicant.

There is no fiscal impact on any state revenues or expenditures.

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

II. Present Situation:

Home Health Agencies (HHA)

An HHA is an organization that provides home health services and staffing services.[1] Home health services provided by an HHA include health and medical services and medical supplies provided to an individual in his or her home, such as nursing care, physical and occupational therapy, and home health aide services.[2,3]

[1] Section 400.462(12), F.S.
[2] Section 400.462(14), F.S. Additional services may include dietetics and nutrition practice and nutrition counseling.
[3] Home health aide services may include hands-on personal care, simple procedures as an extension of therapy or nursing services, assisting in ambulation or exercises, and assisting with the self-administration of medication. *See* s. 400.462(15), F.S.

Home health agencies are regulated by the AHCA pursuant to part III of ch. 400, F.S., and the general licensing provisions in part II of ch. 408, F.S. As of March 31, 2017, there are 1950 licensed HHAs in the state.[4]

A license is required to operate as an HHA unless an exemption applies.[5] Numerous exemptions exist and the most common exemptions apply to an HHA operated by the federal government or home health services provided by a state agency, licensed health care practitioner operating under his or her professional license, or other licensed health care facility.[6]

An HHA must designate a geographic service area (one or more counties within an AHCA district) in which the HHA will operate. These counties are identified on the license. An HHA may apply to amend the geographic service area to expand within the AHCA district under the same license.[7]

A licensed HHA may also operate satellite offices under the main HHA license. A satellite office must be located in the same geographic service area as the HHA's main office and share administration, fiscal management, supervision, and service provision with the main office. Supplies and records may be stored at a satellite office and signs and advertisements can notify the public of the satellite office location. If an HHA wants to open an office outside of the geographic services area where the main licensed office is located, it must obtain a separate license.[8]

Section 400.471(7), F.S., prohibits the AHCA from issuing an initial license to an applicant for an HHA license if the applicant shares common controlling interest with another licensed HHA that is located within 10 miles of the applicant and is in the same county. This restriction was enacted in ch. 2008-246, Laws of Fla.

"Controlling interest" means:[9]

- The applicant or license or
- A person or entity that serves as an officer of, is on the board of directors of, or has a five percent or greater ownership interest in the
  - Applicant or licensee or
  - Management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider.

[4] Agency for Health Care Administration, FloridaHealthFinder.gov, search on home health agencies, available at: http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx (last visited March 31, 2017),
[5] Section 400.464, F.S.
[6] Section 400.464(5), F.S.
[7] Rule 59A-8.007, F.A.C. The AHCA reviews the HHA's previous history of survey results and administrative action to assess the HHA's ability to provide quality services within the requested expanded area.
[8] Rule 59A-8.003(7), F.A.C.
[9] Section 408.803(7), F.S.

Medicare and Medicaid Fraud

The HHA industry in Florida has been marred with years of uncontrolled growth and health care fraud. The Florida Senate studied HHAs in Florida in 2007, issuing an interim report[10] that outlined unusually rapid growth in licensed HHAs, particularly in South Florida, and indications of possible quality-of-care problems and Medicaid fraud. Numerous regulatory reforms were enacted in 2008 and 2009 that focused on fraud and abuse prevention in the HHA industry.[11]

Ongoing monitoring and Medicare and Medicaid fraud enforcement action continues. Most recently, in fiscal year 2015-2016, 24 HHAs were terminated from participation in the Medicaid program as a result of fraud and abuse,[12] and 26 HHAs were denied enrollment or reenrollment in the Medicaid program because of suspected fraud and abuse.[13]

In addition, the Centers for Medicare and Medicaid Services (CMS) has imposed a federal moratorium on new HHAs in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), in order to target fraud in Florida.[14]

- In July 2013, CMS implemented a moratorium on the enrollment of new HHAs in the Miami area.
- CMS extended the moratorium in 2014 to the metropolitan areas of Fort Lauderdale. The moratoria have since been extended at 6-month intervals and remain in place in both Miami and Ft. Lauderdale.
- Effective July 29, 2016, CMS expanded the moratoria statewide and made it applicable to Medicare, Medicaid, and the CHIP.[15]

There is no indication at this point as to the duration of the CMS imposed moratoria. The CMS has created a Provider Enrollment Moratoria Access Waiver Demonstration (PEWD), which is designed to provide exceptions to the moratoria to ensure that beneficiary access to care is not adversely impacted.[16]

III. Effect of Proposed Changes:

The bill removes a prohibition on the agency from issuing an initial home health agency license to an applicant that shares common controlling interests with another licensed home health

[10] The Florida Senate, *Review Regulatory Requirements for Home Health Agencies*, November 2007, http://archive.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-135hr.pdf (last viewed March 30, 2017)
[11] *See* chs. 2008-246, 2009-193, and 2009-223, Laws of Fla.
[12] Joint Report by the AHCA and the Medicaid Fraud Control Unit with the Office of the Attorney General, The State's Efforts to Control Medicaid Fraud and Abuse FY 2015-16, December 16, 2016, page 57, available at: http://ahca.myflorida.com/Executive/Inspector_General/docs/Medicaid_Fraud_Abuse_Annual_Reports/2015-16_MedicaidFraudandAbuseAnnualReport.pdf (last viewed March 30, 2017).
[13] *Id.* at page 58.
[14] CMS *Provider Enrollment Moratorium*, available at: https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/ProviderEnrollmentMoratorium.html (last viewed March 30, 2017).
[15] The moratoria was imposed statewide to address problems in the effectiveness of the earlier moratorium because those did not prevent providers outside the moratoria area from billing for servicing beneficiaries within that area.
[16] *Supra*, note 13.

agency that is located in the same county and within 10 miles of the applicant. The bill also removes the directive for the agency to return the application and fees to the applicant.

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:

Applicants for an initial HHA license with common controlling interests with a currently licensed HHA will be able to obtain a new license within close proximity to the currently licensed HHA. A new license will enable the HHA to do business under a different license authority.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 400.471 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 Garcia

36-00455A-17 20171056__

A bill to be entitled

An act relating to home health care agency licenses; amending s. 400.471, F.S.; removing a prohibition against the issuance of an initial home health agency license to an applicant who shares common controlling interests with another licensed home health agency located within 10 miles of the applicant and in the same county; providing an effective date.

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

Section 1. Subsection (7) of section 400.471, Florida Statutes, is amended to read:

400.471 Application for license; fee.—

~~(7) The agency may not issue an initial license to an applicant for a home health agency license if the applicant shares common controlling interests with another licensed home health agency that is located within 10 miles of the applicant and is in the same county. The agency must return the application and fees to the applicant.~~

Section 2. This act shall take effect July 1, 2017.

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

The Florida Senate

State Senator René García

36th District

Please reply to:

District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

April 19th, 2017

The Honorable Jack Latvala
Chairman, Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latvala,

Please have this letter serve as my formal request to have **SB 1056: Home Health Care Agency Licenses** be heard during the next scheduled Appropriations Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

State Senator René García
District 36

CC: Mike Hansen
Alicia Weiss

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

1056
Bill Number (if applicable)

Topic Home Health 10 mile Rule Repeal

Amendment Barcode (if applicable)

Name Bobby Lolley

Job Title Executive Director

Address 2336 Capital Circle NE
Street

Phone 850 567-1951

Tallahassee Fl. 32308
City *State* *Zip*

Email BLolley@homecarefla.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Home Care Association 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.

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's 1318 & 1454
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senators Garcia and Broxson
SUBJECT:	Child Protection
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS Combined**
2.	Sneed	Williams	AHS	**Recommend: Favorable**
3.	Sneed	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1318 and 1454 makes a number of changes to provisions relating to Child Protection Teams (CPT) in the Department of Health (DOH). The bill:

- Changes the limitation on physicians who can be CPT medical directors to allow a board-certified physician in family medicine (rather than pediatrics) to be hired as a medical director. Physicians employed as CPT medical directors must, within two years after their date of employment, obtain either a subspecialty certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics pursuant to s. 39.303(2)(d), F.S.
- Requires the State Surgeon General and Deputy Secretary for Children's Medical Services to consult with the Statewide Medical Director for Child Protection on decisions regarding screening, employment, and termination of child protection team medical directors at headquarters and within all circuits statewide.
- Revises the group of persons who are authorized to complete the required review of all suspected abuse and neglect reports submitted to the Department of Children and Families (DCF) Florida Abuse Hotline, to determine if a face-to-face medical evaluation by a child protection team is necessary.
- Changes CPT districts to circuits to align the CPT and the DCF service areas.
- Codifies the requirements for Sexual Abuse Treatment Programs (SATP) that provide children alleged to have been sexually abused, their siblings, and their non-offending caretakers with specialized therapeutic treatment to assist in recovery from sexual abuse.

- Requires the Children's Medical Services (CMS) Division in the DOH to convene a task force to develop a standardized protocol for forensic interviewing for children suspected of having been abused and provide staff to support the task force, as needed. The task force must include various representatives from the disciplines of law enforcement, child welfare, and mental health treatment. The bill requires the DOH to provide the protocol to the Legislature by January 1, 2018.
- Expands the cases in which an expert witness certificate may be used, to include cases involving abandonment, dependency, and sexual abuse.

The bill has no impact on state revenues or expenditures.

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

II. Present Situation:

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that works with local Sheriff's offices and the DOH in cases of child abuse and neglect to supplement investigation activities.[1] Current law governs CPTs, and requires the Children's Medical Services Program (CMS) in the DOH to develop, maintain, and coordinate the services of the CPTs in each of the service districts of the DCF. Child protection team medical directors are responsible for oversight of the teams.[2]

Specifically, CPTs help assess risk and protective factors, and provide recommendations for interventions that protect children.[3] Child abuse, abandonment, and neglect reports to the DCF Florida Abuse Hotline that must be referred to child protection teams include cases involving:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises anywhere on a child 5 years of age or younger.
- Any report alleging sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been - pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.[4]

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[1] Children's Medical Services, Child Protection Teams, (Aug. 30, 2012) *available at*: http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html.(last visited March 20, 2017).
[2] Section 39.303, F.S.
[3] Children's Medical Services, Child Protection Team Brochure, available at http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/documents/child_protection_brochure.pdf. (last visited March 20, 2017).
[4] Section 39.303, F.S.

Qualifications for Child Protection Team Medical Directors

Currently, district medical directors are required to be a physician licensed under ch. 458 or ch. 459, F.S., who is a board-certified pediatrician and, within 4 years after the date of his or her employment as a district medical director, either obtain a subspecialty certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics pursuant to s. 39.303(2)(d), F.S.

While child protection teams are required to be medically directed by at least one board-certified pediatrician, despite active recruitment efforts, three of the 22 child protection team medical director positions have been vacant for more than a year. Child Protection Team medical directors are state employees and currently, three are employed by state universities and the remaining 19 are employed by the DOH.[5]

Specialty Certification for Child Abuse Pediatrics

The American Board of Medical Specialties approved the child abuse pediatrics specialty in 2006 and administered the first certification exams in late 2009.[6] Eligibility for the Child Abuse Pediatric certification exam requires a person to have completed both a 3-year residency in pediatrics and a 3-year fellowship in child abuse pediatrics at an accredited program.[7] Fellowship training includes medical evaluations of children with manifestations of acute and chronic child maltreatment, as well as children with a broad range of other diagnoses. The trainee develops expertise in determining non-accidental trauma and other forms of maltreatment, by developing excellent diagnostic expertise and knowledge of various disorders that may mimic child maltreatment. Training will include mandatory reporting laws, legal proceedings, child abuse and family violence prevention, teaching opportunities, and clinical research.[8]

As of December 31, 2015, Florida has 12 physicians certified in Child Abuse Pediatrics through the American Board of Pediatrics.[9]

Third-Party Credentialing Entity

The Florida Certification Board offers the Child Protection Team Medical Provider (CPTMP) credential to eligible members of the Florida Department of Health's Child Protection Teams. This program was developed in response to the requirement that each DOH district medical director obtain a subspecialist certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity. The DOH has expanded eligibility for this credential to specified members of Florida's Child Protection

[5] Department of Health, 2017 Agency Legislative Bill Analysis, SB 1318, March 1, 2017.
[6] HealthLeaders Media, New Specialty Certification for Child Abuse Pediatrics, Nov. 6, 2009, *available at*: http://www.healthleadersmedia.com/content/PHY-241751/New-Specialty-Certification-for-Child-Abuse-Pediatrics.html. (last visited Mar. 20, 2017).
[7] Council of Pediatric Subspecialties, Pediatric Child Abuse, Nov. 5, 2013. *available at*: http://pedsubs.org/SubDes/ChildAbuse.cfm. (last visited Mar. 20, 2017).
[8] *Id*.
[9] American Board of Pediatrics Inc., 2015-2016 Workforce Data, *available at*: https://www.abp.org/sites/abp/files/pdf/workforcebook.pdf. (last visited March 20, 2017)

Teams. To be eligible to take the exam, applicants must either be a board certified pediatrician, a board certified advanced registered nurse practitioner, or another board certified medical professional.[10]

Sexual Abuse Treatment Programs (SATP)

In 1986, the legislature required the department to develop a model plan for community intervention and treatment of intrafamily sexual abuse in conjunction with the Department of Law Enforcement, the DOH, the Department of Education, the Office of Attorney General (OAG), the state Guardian Ad Litem Program, the Department of Corrections, representatives of the judiciary, and professionals and advocates from the mental health and child welfare community.[11]As a result, children alleged to have been sexually abused, their siblings, and their non-offending caretakers are currently served by 14 sexual abuse treatment programs statewide. The programs are a partnership between the DOH, the OAG, and the DCF. The DOH contracts with local programs to provide administrative and clinical oversight, OAG pays for therapeutic services, and the DOH and the DCF have an interagency agreement for the operation of the program. This program provided therapeutic counseling services to 3,400 child victims of sexual abuse and their non-offending family members during Fiscal Year 2015-2016.[12]

Forensic Interviewing of Child Victims

Forensic interviewing began after several high-profile cases in the 1980s involving allegations of daycare providers sexually abusing multiple children in their care became the subject of analysis based on the interview techniques that were used.[13] Law enforcement had relied on mental health practitioners because of their ability to establish and build rapport with children. However, these mental health practitioners used therapeutic techniques that were later deemed inappropriate for forensic purposes due to concerns of suggestibility and the encouragement of make-believe and pretend. Three specific criticisms of these methods were that:

- Investigation activities and decision-making were not coordinated across the multiple agencies involved;
- Children were interviewed too many times by too many interviewers and had to tell their story over and over again; and
- Children were interviewed in stressful or compromising locations that disturbed them further and made it difficult to talk.[14]

[10] Florida Certification Board, Child Protection Team Medical Provider Certification, *available at*: http://flcertificationboard.org/certification/childprotectionteam-credential/ (last visited March 22, 2017).
[11] Chapter 85-54, Laws of Florida. The provision was created as s. 415.5095, it was transferred and renumbered as s.39.305 in 1998 (Chapter 98-403, Laws of Florida) and subsequently repealed in 2011 (Chapter 2011-213, Laws of Florida).
[12] Department of Health, 2017 Agency Legislative Bill Analysis, SB 1318, March 1, 2017.
[13] Walker, N., Forensic Interviews of Children: The Components of Scientific Validity and Legal Admissibility, 2002, *available at*: http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1241&context=lcp&sei-redir=1&referer=http%3A%2F%2Fwww.bing.com%2Fsearch%3Fq%3Dforensic%2Binterviewing%2Bchildren%26src%3DIE-SearchBox%26FORM%3DIENTSR#search=%22forensic%20interviewing%20children%22. (last visited March 23, 2017).
[14] Cross, T. Jones, L., et al, *Child forensic interviewing in Children's Advocacy Centers: Empirical data on a practice model*, Child Abuse & Neglect 31 (2007), *available from*: http://www.unh.edu/ccrc/pdf/cv108.pdf. (last visited March 23, 2017).

A forensic interview, however, is a structured conversation with a child intended to elicit detailed information about a possible event that the child may have experienced or witnessed. The purposes of a forensic interview are:

- To obtain information from a child that may be helpful in a criminal investigation;
- To assess the safety of the child's living arrangements;
- To obtain information that will either corroborate or refute allegations or suspicions of abuse and neglect; and
- To assess the need for medical treatment and psychological care.[15]

People from multiple disciplines attend, or later review, the forensic interview including child protective investigators, police officers and other law enforcement officials, child protection attorneys, victim advocates, and medical and mental health care practitioners. The interview provides facts and direction for those involved with the investigation and provision of services.[16]

Child Advocacy Centers have taken the lead in the development of forensic interviewing protocols for children and one of their primary functions is to conduct forensic interviews in a non-threatening, child-friendly environment. Florida law provided standards for child advocacy centers in 1998[17] and Florida currently has 27 Child Advocacy Centers that serve an estimated 85 percent of children in need of services statewide.[18]

The DOH reports that a variety of forensic interview protocols exist and vary from being very structured (scripted), less structured (semi-scripted) to flexible (not scripted but includes guidelines for interviewing). Agencies and entities providing forensic interviews can choose from a variety of well-known and established protocols, most of which provide structured training for forensic interviewers.[19] One of these existing protocols is the internationally recognized National Children's Advocacy Center Child Forensic Interview Structure that is flexible, can be adapted to children of all ages and cultural backgrounds, and is appropriate for interviewing children who may have experienced sexual or physical abuse or who may be a witness to violence.[20]

Expert Witness Certificates and Expert Testimony in Child Abuse Cases

Current law authorizes the DOH to issue a certificate authorizing a physician who holds an active and valid license to practice medicine or osteopathic medicine in another state or a province of Canada to provide expert testimony in this state, if the physician applies and pays for the certificate.[21]An expert witness certificate authorizes the physician to whom the certificate is issued to do only the following:

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[15] *Id*.
[16] U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin, *Child Forensic Interviewing: Best Practices*, September 2015, *available at*: https://www.ojjdp.gov/pubs/248749.pdf. (last visited March 22, 2017).
[17] Chapter 98-403, F.S.
[18] Florida Network of Child Advocacy Centers, *available at*: http://www.fncac.org/about-us. (last visited March 23, 2017).
[19] Florida Department of Health, 2017 Agency Legislative Bill Analysis, SB 1454, March 6, 2017.
[20] National Child Advocacy Center, Forensic Interviewing of Children, *available at*: http://www.nationalcac.org/forensic-interviewing-of-children-training/. (last visited March 23, 2017).
[21] Sections 458.3175 and 459.0066, F.S.

- Provide a verified written medical expert opinion as provided in s. 766.203, F.S.;
- Provide expert testimony about the prevailing professional standard of care in connection with medical negligence litigation pending in this state against a physician licensed under chapter 458 or this chapter; and
- Provide expert testimony in criminal child abuse and neglect cases in this state.[22]

Currently, expert testimony requirements in chapter 827, relating to abuse of children that rises to the level of criminal abuse, are restricted only to criminal child abuse cases and not family or dependency court.[23]

III. Effect of Proposed Changes:

Section 1 amends s. 39.303, F.S., relating to child protection teams, to change the limitation on physicians who can be CPT medical directors to allow a board-certified physician in family medicine (rather than pediatrics) to be hired as a medical director. Physicians employed as CPT medical directors would, within two years after their date of employment, obtain either a subspecialty certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics pursuant to s. 39.303(2)(d), F.S.

This section includes the CPT medical director in the list of persons who can complete the required review of all suspected abuse and neglect reports called to the DCF Florida Abuse Hotline to determine if a face-to-face medical evaluation by a child protection team is necessary.

This section changes references to CPT districts to "circuits", to align the CPT and the DCF service areas.

This section requires the Children's Medical Services (CMS) within the DOH to convene a task force to develop a standardized protocol for forensic interviewing for children suspected of having been abused and provide staff to support the task force, as needed. The task force must include various representatives from the disciplines of law enforcement, child welfare, and mental health treatment. The bill requires the DOH to provide the protocol to the legislature by January 1, 2018.

This section also codifies the requirements for Sexual Abuse Treatment Programs (SATP) that provide children alleged to have been sexually abused, their siblings, and their non-offending caretakers with specialized therapeutic treatment to assist in recovery from sexual abuse.

Section 2 amends s. 39.3031, F.S., relating to rules for the implementation of s. 39.303, F.S., to conform provisions to changes made by the bill.

Section 3 amends s. 458.3175, F.S., relating to expert witness certificates, to allow a physician who holds an active and valid license to practice medicine in another state or a province of

[22] *Id*.
[23] Section 827.03, F.S.

Canada and holds an expert witness certificate to provide expert testimony in neglect, abandonment, dependency and sexual abuse cases.

Section 4 amends s. 459.0066, F.S., relating to expert witness certificates, to allow a physician who holds an active and valid license to practice osteopathic medicine in another state or a province of Canada and holds an expert witness certificate to provide expert testimony in neglect, abandonment, dependency and sexual abuse cases.

Section 5 amends s. 827.03, F.S., relating to abuse, aggravated abuse, and neglect of a child, to expand the expert testimony requirements of subsection (3) to include neglect, abandonment, dependency and sexual abuse cases.

Section 6 provides an effective date of 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 does not impact state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends ss. 39.303, 39.3031, 458.3175, 459.0066, and 827.03 of the Florida Statutes.

IX. Additional Information:

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

CS by Committee on Children, Families, and Elder Affairs on March 27, 2017:

- No longer limits physicians who could be CPT medical directors to only those board certified in pediatrics, but would allow a board-certified physician in family medicine to be hired as a medical director. Physicians employed as CPT medical directors must, within two years after their date of employment, obtain either a subspecialty certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics pursuant to s. 39.303(2)(d), F.S.
- Requires the Children's Medical Services (CMS) within the DOH to convene a task force to develop a standardized protocol for forensic interviewing for children suspected of having been abused and provide staff to support the task force, as needed. The task force must include various representatives from the disciplines of law enforcement, child welfare, and mental health treatment. The bill requires the DOH to provide the protocol to the legislature by January 1, 2018.
- Expands the cases in which an expert witness certificate may be used, to include cases involving abandonment, dependency, and sexual abuse.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and Senators Garcia and Broxson

586-02923A-17 20171318c1

A bill to be entitled

An act relating to child protection; amending s. 39.303, F.S.; revising the entities responsible for screening, employing, and terminating child protection team medical directors to include the Statewide Medical Director for Child Protection; revising the term "district medical director" to "child protection team medical director"; revising references to subdivisions of the state from "districts" to "circuits"; revising the required board certifications for child protection team medical directors and reviewing physicians; revising the timeframe in which child protection team medical directors must obtain certification; requiring Children's Medical Services to convene a task force to develop a protocol for forensic interviewing of children suspected of having been abused; specifying membership of the task force; requiring Children's Medical Services to develop, maintain, and coordinate one or more sexual abuse treatment programs; amending s. 39.3031, F.S.; requiring the Department of Health, in consultation with the Department of Children and Families, to adopt rules regarding sexual abuse treatment programs; amending ss. 458.3175, 459.0066, and 827.03, F.S.; revising provisions regarding expert testimony provided by certain entities to include criminal cases involving child abuse and neglect, dependency cases, and cases involving sexual abuse of a child; providing an effective date.

586-02923A-17 20171318c1

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

Section 1. Section 39.303, Florida Statutes, is amended to read:

39.303 Child protection teams and sexual abuse treatment programs; services; eligible cases.—

(1) The Children's Medical Services Program in the Department of Health shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the service circuits ~~districts~~ of the Department of Children and Families. Such teams may be composed of appropriate representatives of school districts and appropriate health, mental health, social service, legal service, and law enforcement agencies. The Department of Health and the Department of Children and Families shall maintain an interagency agreement that establishes protocols for oversight and operations of child protection teams and sexual abuse treatment programs. The State Surgeon General and the Deputy Secretary for Children's Medical Services, in consultation with the Secretary of Children and Families and the Statewide Medical Director for Child Protection, shall maintain the responsibility for the screening, employment, and, if necessary, the termination of child protection team medical directors~~, at headquarters and~~ in the 15 circuits ~~districts~~.

(2)(a) The Statewide Medical Director for Child Protection must be a physician licensed under chapter 458 or chapter 459 who is a board-certified pediatrician with a subspecialty certification in child abuse from the American Board of

Pediatrics.

(b) Each child protection team ~~district~~ medical director must be a physician licensed under chapter 458 or chapter 459 who is a board-certified physician in pediatrics or family medicine ~~pediatrician~~ and, within 2 ~~4~~ years after the date of ~~his or her~~ employment as a child protection team ~~district~~ medical director, obtains ~~either obtain~~ a subspecialty certification in child abuse from the American Board of Pediatrics or within 2 years meet the minimum requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics pursuant to paragraph (d). Each child protection team ~~district~~ medical director employed on July 1, 2015, must, by July 1, 2019 ~~within 4 years~~, either obtain a subspecialty certification in child abuse from the American Board of Pediatrics or meet the minimum requirements established by a third-party credentialing entity recognizing a demonstrated specialized competence in child abuse pediatrics pursuant to paragraph (d). Child protection team medical directors shall be responsible for oversight of the teams in the circuits ~~districts~~.

(c) All medical personnel participating on a child protection team must successfully complete the required child protection team training curriculum as set forth in protocols determined by the Deputy Secretary for Children's Medical Services and the Statewide Medical Director for Child Protection.

(d) Contingent on appropriations, the Department of Health shall approve one or more third-party credentialing entities for the purpose of developing and administering a professional

credentialing program for child protection team ~~district~~ medical directors. Within 90 days after receiving documentation from a third-party credentialing entity, the department shall approve a third-party credentialing entity that demonstrates compliance with the following minimum standards:

1. Establishment of child abuse pediatrics core competencies, certification standards, testing instruments, and recertification standards according to national psychometric standards.

2. Establishment of a process to administer the certification application, award, and maintenance processes according to national psychometric standards.

3. Demonstrated ability to administer a professional code of ethics and disciplinary process that applies to all certified persons.

4. Establishment of, and ability to maintain, a publicly accessible Internet-based database that contains information on each person who applies for and is awarded certification, such as the person's first and last name, certification status, and ethical or disciplinary history.

5. Demonstrated ability to administer biennial continuing education and certification renewal requirements.

6. Demonstrated ability to administer an education provider program to approve qualified training entities and to provide precertification training to applicants and continuing education opportunities to certified professionals.

(3) The Department of Health shall use and convene the child protection teams to supplement the assessment and protective supervision activities of the family safety and

preservation program of the Department of Children and Families. This section does not remove or reduce the duty and responsibility of any person to report pursuant to this chapter all suspected or actual cases of child abuse, abandonment, or neglect or sexual abuse of a child. The role of the child protection teams is ~~shall be~~ to support activities of the program and to provide services deemed by the child protection teams to be necessary and appropriate to abused, abandoned, and neglected children upon referral. The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a child protection team must ~~shall~~ be capable of providing include, but are not limited to, the following:

(a) Medical diagnosis and evaluation services, including provision or interpretation of X rays and laboratory tests, and related services, as needed, and documentation of related findings.

(b) Telephone consultation services in emergencies and in other situations.

(c) Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of the Department of Health.

(d) Such psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.

(e) Expert medical, psychological, and related professional testimony in court cases.

(f) Case staffings to develop treatment plans for children whose cases have been referred to the team. A child protection team may provide consultation with respect to a child who is alleged or is shown to be abused, abandoned, or neglected, which consultation shall be provided at the request of a representative of the family safety and preservation program or at the request of any other professional involved with a child or the child's parent or parents, legal custodian or custodians, or other caregivers. In every such child protection team case staffing, consultation, or staff activity involving a child, a family safety and preservation program representative shall attend and participate.

(g) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(h) Such training services for program and other employees of the Department of Children and Families, employees of the Department of Health, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.

(i) Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens more successfully to prevent, identify, and treat child abuse, abandonment, and neglect in the community.

(j) Child protection team assessments that include, as appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews.

A child protection team that is evaluating a report of medical neglect and assessing the health care needs of a medically complex child shall consult with a physician who has experience in treating children with the same condition.

(4) The child abuse, abandonment, and neglect reports that must be referred by the department to child protection teams of the Department of Health for an assessment and other appropriate available support services as set forth in subsection (3) must include cases involving:

(a) Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.

(b) Bruises anywhere on a child 5 years of age or under.

(c) Any report alleging sexual abuse of a child.

(d) Any sexually transmitted disease in a prepubescent child.

(e) Reported malnutrition of a child and failure of a child to thrive.

(f) Reported medical neglect of a child.

(g) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and later died, as a result of suspected abuse, abandonment, or neglect, when any sibling or other child remains in the home.

(h) Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.

(5) All abuse and neglect cases transmitted for investigation to a circuit ~~district~~ by the hotline must be simultaneously transmitted to the ~~Department of Health~~ child

protection team for review. For the purpose of determining whether a face-to-face medical evaluation by a child protection team is necessary, all cases transmitted to the child protection team which meet the criteria in subsection (4) must be timely reviewed by:

(a) A physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;

(b) A physician licensed under chapter 458 or chapter 459 who holds board certification in a specialty other than pediatrics, who may complete the review only when working under the direction of the child protection team medical director or a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;

(c) An advanced registered nurse practitioner licensed under chapter 464 who has a specialty in pediatrics or family medicine and is a member of a child protection team;

(d) A physician assistant licensed under chapter 458 or chapter 459, who may complete the review only when working under the supervision of the child protection team medical director or a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team; or

(e) A registered nurse licensed under chapter 464, who may complete the review only when working under the direct supervision of the child protection team medical director or a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child

protection team.

(6) A face-to-face medical evaluation by a child protection team is not necessary when:

(a) The child was examined for the alleged abuse or neglect by a physician who is not a member of the child protection team, and a consultation between the child protection team medical director or a child protection team board-certified pediatrician, advanced registered nurse practitioner, physician assistant working under the supervision of a child protection team medical director or a child protection team board-certified pediatrician, or registered nurse working under the direct supervision of a child protection team medical director or a child protection team board-certified pediatrician, and the examining physician concludes that a further medical evaluation is unnecessary;

(b) The child protective investigator, with supervisory approval, has determined, after conducting a child safety assessment, that there are no indications of injuries as described in paragraphs (4)(a)-(h) as reported; or

(c) The child protection team medical director or a child protection team board-certified pediatrician, as authorized in subsection (5), determines that a medical evaluation is not required.

Notwithstanding paragraphs (a), (b), and (c), a child protection team medical director or a child protection team pediatrician, as authorized in subsection (5), may determine that a face-to-face medical evaluation is necessary.

(7) In all instances in which a child protection team is

providing certain services to abused, abandoned, or neglected children, other offices and units of the Department of Health, and offices and units of the Department of Children and Families, shall avoid duplicating the provision of those services.

(8) The Department of Health child protection team quality assurance program and the Family Safety Program Office of the Department of Children and Families shall collaborate to ensure referrals and responses to child abuse, abandonment, and neglect reports are appropriate. Each quality assurance program shall include a review of records in which there are no findings of abuse, abandonment, or neglect, and the findings of these reviews shall be included in each department's quality assurance reports.

(9)(a) Children's Medical Services shall convene a task force to develop a standardized protocol for forensic interviewing of children suspected of having been abused. The Department of Health shall provide staff to the task force as necessary. The task force must include:

1. A representative from the Florida Prosecuting Attorneys Association.

2. A representative from the Florida Psychological Association.

3. The Statewide Medical Director for Child Protection.

4. A representative from the Florida Public Defender Association.

5. The executive director of the Statewide Guardian Ad Litem Office.

6. A representative from a community-based care lead

agency.

7. A representative from Children's Medical Services.

8. A representative from the Florida Sheriffs Association.

9. A representative from the Florida Chapter of the American Academy of Pediatrics.

10. A representative from the Florida Network of Children's Advocacy Centers.

11. Other representatives designated by Children's Medical Services.

(b) Children's Medical Services must provide the standardized protocol to the President of the Senate and the Speaker of the House of Representatives by July 1, 2018.

(c) Members of the task force are not entitled to per diem or other payment for service on the task force.

(10) The Children's Medical Services program in the Department of Health shall develop, maintain, and coordinate the services of one or more sexual abuse treatment programs.

(a) A child under the age of 18 who is alleged to be a victim of sexual abuse, his or her siblings, non-offending caregivers, and family members who have been impacted by sexual abuse are eligible for services.

(b) Sexual abuse treatment programs must provide specialized therapeutic treatment to victims of child sexual abuse, their siblings, nonoffending caregivers, and family members to assist in recovery from sexual abuse, to prevent developmental impairment, to restore the children's pre-abuse level of developmental functioning, and to promote healthy, non-abusive relationships. Therapeutic intervention services must include crisis intervention, clinical treatment, and individual,

family, and group therapy.

(c) The sexual abuse treatment programs and child protection teams must provide referrals for victims of child sexual abuse and their families, as appropriate.

Section 2. Section 39.3031, Florida Statutes, is amended to read:

39.3031 Rules for implementation of s. 39.303.—The Department of Health, in consultation with the Department of Children and Families, shall adopt rules governing the child protection teams and sexual abuse treatment programs pursuant to s. 39.303, including definitions, organization, roles and responsibilities, eligibility, services and their availability, qualifications of staff, and a waiver-request process.

Section 3. Paragraph (c) of subsection (2) of section 458.3175, Florida Statutes, is amended to read:

458.3175 Expert witness certificate.—

(2) An expert witness certificate authorizes the physician to whom the certificate is issued to do only the following:

(c) Provide expert testimony in criminal child abuse and neglect cases pursuant to chapter 827, dependency cases pursuant to chapter 39, and cases involving sexual battery of a child pursuant to chapter 794 in this state.

Section 4. Paragraph (c) of subsection (2) of section 459.0066, Florida Statutes, is amended to read:

459.0066 Expert witness certificate.—

(2) An expert witness certificate authorizes the physician to whom the certificate is issued to do only the following:

(c) Provide expert testimony in criminal child abuse and neglect cases pursuant to chapter 827, dependency cases pursuant

to chapter 39, and cases involving sexual battery of a child pursuant to chapter 794 in this state.

Section 5. Paragraph (d) of subsection (3) of section 827.03, Florida Statutes, is amended to read:

827.03 Abuse, aggravated abuse, and neglect of a child; penalties.—

(3) EXPERT TESTIMONY.—

(d) The expert testimony requirements of this subsection apply only to criminal child abuse and neglect cases pursuant to chapter 827, dependency cases pursuant to chapter 39, and cases involving sexual battery of a child pursuant to chapter 794 and not to family court ~~or dependency court~~ cases.

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

Please reply to:

☐ **District Office:**

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

The Florida Senate

State Senator René García
36th District

April 19th, 2017

The Honorable Jack Latvala
Chairman, Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latvala,

Please have this letter serve as my formal request to have **SB 1318: Child Protection** be heard during the next scheduled Appropriations Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

State Senator René García
District 36

CC: Mike Hansen
Alicia Weiss

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 1562 (424970)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Garcia
SUBJECT:	Expressway Authorities
DATE:	April 24, 2017 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1562 prohibits the Miami-Dade County Expressway Authority (MDX), subject to certain requirements, from increasing its tolls unless justified by an independent traffic and revenue study, except to the extent necessary to adjust for inflation. The MDX must approve toll increases by a two-thirds vote of its board members. The bill limits the amount of toll revenues used by the MDX for administrative expenses to not greater than ten percent above the annual state average of administrative costs. The Florida Transportation Commission (FTC) is directed to determine the annual state average of administrative costs based on the annual administrative expenses, as defined, of all expressway authorities of this state. Subject to any bond covenants, the bill authorizes the MDX to reduce by up to ten percent the toll charged for SunPass users of its facilities at the time the toll is incurred.

The bill requires the MDX to dedicate at least 10 percent, but not greater than 30 percent, of certain surplus revenues to transportation- and transit-related expenses for projects in municipalities and counties in which the MDX operates, with the MDX determining which expenses to fund from submitted proposals. These expenses must have a rational nexus to the transportation facilities of the MDX. The MDX is required to have periodic audits conducted by an independent third party, which audit reports must be made publicly available on the MDX's website, and to post other specified financial and operating information on its website.

Additionally, the bill authorizes the FDOT to require use of an electronic transponder interoperable with the FDOT's electronic toll collection system for the use of high-occupancy toll (HOT) lanes or express lanes. Effective July 1, 2018, the bill requires the FDOT to charge a customer the minimum express lane toll if the customer's average travel speed falls below 40 miles per hour.

The FTE is authorized to require use of an electronic transponder interoperable with the FDOT's electronic toll collection system for the use of express lanes on the turnpike system. Implementation of variable pricing in express lanes on the turnpike system is restricted based on certain level-of-service or highway capacity criteria. Effective July 1, 2018, the bill requires that a customer be charged a general toll lane toll amount plus 25 cents if the customer's average travel speed falls below 40 miles per hour.

The bill also extends the time frame during which the FDOT is required to program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Miami-Dade, Broward, and Palm Beach Counties are at least 90 percent of the share of net toll collections attributable to users of the turnpike system in those counties, as compared to total net toll collections attributable to users of the turnpike system.

The bill may reduce FDOT revenues related to the reduced toll for certain travelers of HOT lanes. The fiscal impact of the bill to the MDX is indeterminate. See Section V., "Fiscal Impact Statement," for further details.

The bill takes effect July 1, 2017, except as otherwise provided.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the effect of proposed changes.

III. Effect of Proposed Changes:

Miami-Dade County (Sections 4 and 5)

Present Situation:

Section 125.011(1), F.S. defines a county as: "[A]any county operating under a home rule charter adopted pursuant to Art. VIII, ss. 10, 11, and 24 of the State Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the State Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred."

The local governments authorized to operate under a home rule charter by the State Constitutions of 1885 and 1968 are the City of Key West and Monroe County,[1] Dade County,[2] and

[1] FLA. CONST. art. VIII, s. 6, n. 2.
[2] FLA. CONST. art. VIII, s. 6, n. 3.

Hillsborough County.[3] Of these, only Miami-Dade County operates under a home-rule charter, which was adopted on May 21, 1957, under this constitutional provision.[4]

Miami-Dade County Expressway Authority

The Florida Expressway Authority Act (Act)[5] authorizes any county or two or more contiguous counties within a single Florida Department of Transportation (FDOT) district, by resolution adopted by the board of county commissioners, to form an expressway authority, which is an agency of the state.[6] The Miami-Dade County Commission adopted ordinance 94-215 in 1994 creating the Miami-Dade County Expressway Authority (MDX).[7] The MDX is the only expressway authority created under the Act.

The MDX's system[8] consists of the following roadways in Miami-Dade County:
- Airport Expressway (SR 112):
- Dolphin Expressway (SR 836);
- Don Shula Expressway (SR 874);
- Snapper Creek Expressway (SR 878); and
- Gratigny Parkway (SR 924).

MDX Governing Board

Section 348.0003(2)(d), F.S., F.S., provides that in any county as defined in s. 125.011(1), the authority's governing body consists of up to nine members, and the following provisions specifically apply. Except for the district secretary of the FDOT, authority members must be residents of the county. Five voting members are appointed by the governing body of the county. At the discretion of the governing body of the county, up to two of these members may be elected officials residing in the county. Three voting members are appointed by the Governor. One member is the FDOT district secretary in the district that contains such county, who is an ex officio voting member of the authority.

Purposes and Powers

Section 348.0004, F.S., provides the purposes and powers of expressway authority's created in part I of Ch. 348, F.S. Section 348.0004(2)(e), F.S., gives expressway authorities created under the Act the power to fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system, which tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act.[9] However, such right and power may

[3] FLA. CONST. art. VIII, s. 6, n. 4.
[4] Florida Association of Counties, Charter County Information, https://www.fl-counties.com/charter-county-information#. (Last visited March 19, 2017.)
[5] Part I of Ch. 348, F.S.
[6] Section 348.0003(1), F.S
[7] A copy of the ordinance is available at http://miamidade.fl.elaws.us/code/coor/coor_ptiii_ch2_artxviii/. (Last visited March 19, 2017.)
[8] See MDX System Map available at http://mdxway.com/about/expressway-map(last visited March 19, 2017).
[9] Section 348.0010, F.S., provides a covenant of the state relating to the Florida Expressway Authority Act. In that statute the state pledges that it will not limit or alter the rights vested in an authority and FDOT until all bonds, together with their interest, are fully paid and discharged.

be assigned or delegated by the authority to the FDOT. As provided in s. 348.004(7), F.S., and after a public hearing and county approval, the MDX may use surplus toll revenues to fund:

- County public transportation facilities;
- Intermodal facilities;
- Multimodal corridors, including bicycle facilities or greenways that improve transportation services in the county; or
- Any programs or projects that improve the expressway system's level of service.

These expenditures must be consistent with the metropolitan planning organization's adopted long-range plan.

MDX Frequent Drivers Rewards Program

The MDX currently offers frequent users a rewards program, the operation of which the MDX describes as follows:

> Each fiscal year (July 1st to June 30th) after the close of its financial books, MDX will declare a toll distribution of dividends to members of the Frequent Driver Rewards Program. This is after the agency meets its financial obligations, including making its annual principal and interest payments, meeting its senior debt coverage ratio, and covering its operation and maintenance costs. MDX will give back those savings generated by operational efficiencies of the agency directly to its customers through the Frequent Driver Rewards Program.[10]

To participate in the program, MDX customers must register each year, be a SunPass customer in good standing, have a two-axle vehicle, and spend at least $100 annually between July 1st to June 30 in tolls per transponder on any of the MDX's five expressways. Any tolls paid using Toll-By-Plate[11] or Image Toll transactions (IToll) are considered ineligible for the annual calculation. Eligibility of SunPass tolls paid during the fiscal year is determined solely by the MDX. The most recent registration period for tolls paid between July 1, 2016, to June 30, 2017, ended on March 31, 2017. Reward checks to eligible recipients are expected in December of 2017. [12]

Procedure for Toll Rate Adjustments for Inflation

Section 338.165(3), F.S., requires the FDOT and the Florida Turnpike Enterprise (FTE) to index toll rates on their existing toll facilities to the annual Consumer Price Index or similar inflation indicators. Toll adjustments for inflation may be made no more than once a year, and no less than once every five years, as necessary to accommodate cash toll rate schedules. Toll rates may

[10] *See* the MDX website available at: http://mdxway.com/frequentdriver/faqs. (Last visited March 19, 2017.)
[11] Toll-By-Plate is an FDOT image-based electronic toll collection system that uses photographic images of the vehicles license plate to identify the customer responsible for payment. This feature is available on the Homestead Extension of Florida's Turnpike from Florida City to Miramar in Miami-Dade County. *See* the FDOT website available at: https://www.tollbyplate.com/index. (Last visited March 20, 2017.)
[12] *Supra* note 22.

be increased beyond these limits as directed by bond documents, covenants, or governing body authorization or pursuant to an FDOT rule.

Effect of Proposed Changes:

Section 4 amends s. 348.0004(2)(e), F.S., to provide that the MDX, notwithstanding any law to the contrary, and subject to any contractual requirements contained in documents securing indebtedness outstanding on July 1, 2017:

- May not increase a toll unless the increase is justified to the MDX's satisfaction by a traffic and revenue study conducted by an independent third party.
- May only otherwise increase tolls to the extent necessary to adjust for inflation under the toll rate adjustment procedure in s. 338.165, F.S.; and
- Must approve a toll increase by a two-thirds vote of the MDX governing board.

The amount of toll revenues used by the MDX for administrative expenses may not be more than 10 percent above the annual state average of administrative costs, determined as follows: The FTC is directed to determine the annual state average of administrative costs based on the annual administrative expenses of all the expressway authorities of this state. Administrative expenses include, but are not limited to:

- Employee salaries and benefits;
- Small business outreach;
- Insurance;
- Professional service contracts not directly related to the operation and maintenance of the expressway system; and
- Other overhead costs.

The FTC is authorized to adopt rules necessary to implement these provisions.

The bill limits the MDX's authority to increase tolls and, therefore, decreases its ability to raise revenues. According to the MDX, this revision impacts the MDX's ability to issue future bonds and eliminates the MDX's ability to set tolls as may be operationally needed.[13] The bill also limits the MDX's use of its toll revenues for administrative expenses to not more than ten percent above the annual state average of administrative costs, as determined by the FTC. No other expressway authority is subject to similar statutory restrictions on administrative expenses.

The bill creates a new subsection (6) of s. 348.0004, F.S. Subject to compliance with bond covenants, the MDX is authorized, at the time that any toll is incurred, to reduce the toll charged on any of the MDX's toll facilities by up to ten percent for each SunPass registrant having an account in good standing and having the license plate of the vehicle or vehicles incurring the toll registered to the SunPass account at the time the toll is incurred. The bill prohibits the MDX from imposing additional requirements for receipt of the reduced toll amount.

This revision would reduce the amount of the MDX's toll revenues, if it chooses to reduce tolls for the specified users in an amount that exceeds distributions under its current Frequent Drivers

[13] The MDX email to committee staff April 18, 2017. (On file in the Senate Transportation Committee.)

Rewards Program. The amount of the reduction is dependent on the percentage of the toll reduction granted and on the number of eligible trips on the MDX's facilities.

The bill creates a new subsection (11) of s. 348.0004, F.S. The MDX is directed to determine its surplus revenues as defined in s. 348.0002(2), F.S.,[14] and deduct from the surplus revenues a prudent reserve as determined by the MDX board. The MDX must then dedicate at least ten percent, but not greater than 30 percent, of the remaining surplus revenues after the deduction of a prudent reserve to transportation- and transit-related expenses for projects in municipalities and counties in which the MDX operates. The MDX is authorized to determine which specific transportation- or transit-related expenses to fund from proposals submitted by municipalities and counties.

Funded transportation- and transit-related expenses must have a rational nexus to the MDX's transportation facilities and may include, but are not limited to:

- Expenses associated with the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of public transportation facilities, transit facilities, intermodal facilities, or multimodal corridors owned or operated by such municipality or county; and
- Transit-related expenses that impact the capacity or use of the MDX's transportation facilities.

A rational nexus must demonstrate that the proposed transportation expenditure makes a substantial impact on the capacity or use of the MDX's transportation facilities, or that the proposed transit expenditure complements the operation of, or expands the access to, the MDX's transportation facilities.

This revision will reduce the amount of surplus revenues available to the MDX for use on the MDX's facilities, to the extent that a portion of the surplus revenues is used to fund transportation- or transit-related expenses in proposals submitted by municipalities and counties.

The bill creates a new subsection (12) of s. 348.0004, F.S. The new provision requires the MDX to have an audit[15] conducted by an independent third party not less than biennially, and the audit report must be posted on the MDX's website.

Section 5 creates s. 348.00115, F.S., to require the MDX to post the following information on its website:

- Audited financial statements and any interim financial reports;

[14] That section defines "surplus revenues" to mean revenues in any county as defined in s. 125.011(1) derived from rates, fees, rentals, tolls, and other charges for the services and facilities of an expressway system as may exist at the end of a fiscal year after payment of all annually required operating and maintenance expenses for the fiscal year and all debt service payable in the fiscal year on bonds issued or other debts incurred for any purpose in connection with an expressway system, including debt incurred to finance the construction, extension, repair, or maintenance of an expressway system.

[15] The MDX advises it is currently subject to an annual external audit conducted by a certified public accounting firm that is posted on the MDX website and filed with the auditor general, the Securities Exchange Commission, the bondholders trustee, and the Florida Transportation Commission. The MDX email to committee staff April 18, 2017. (On file in the Senate Transportation Committee.) As the MDX is a special district, it appears it is subject to the annual financial audit report requirements of s. 218.39, F.S.

- Board and committee meeting agendas, meeting packets, and minutes;
- Bond covenants for any outstanding bonds issues;
- Authority budgets;
- Authority contracts;[16]
- Authority expenditure data, which must include the name of the payee, the date of the expenditure, and the amount of the expenditure; be searchable by name of the payee, name of the paying agency, and fiscal year; and be in a downloadable format allowing offline access; and
- Information relating to current, recently completed, and future projects on authority facilities.

The MDX advises the majority of these requirements are already in place.[17]

High-Occupancy Toll Lanes and Express Lanes (Sections 1 and 2)

Present Situation:

A high-occupancy-vehicle (HOV) lane is a lane of a public roadway designated for use by vehicles in which there is more than one occupant.[18] A high-occupancy toll lane is an HOV lane, the use of which requires payment of a toll. Tolled HOV lanes are referred to as high-occupancy toll lanes, or HOT lanes.[19]

Current law does not define the terms "HOT lane" or "express lane." However, the FDOT's Topic No. 525-030-020-a, *Tolling for New and Existing Facilities on the State Highway System,*[20] provides the following definitions:

- "Managed Lanes" - Highway facilities or sets of lanes within a highway facility where operational strategies are proactively implemented and managed in response to changing conditions with a combination of tools. These tools may include accessibility, vehicle eligibility, pricing, or a combination thereof. Types of managed lanes include high occupancy vehicle (HOV) lanes, high occupancy toll (HOT) lanes, truck only lanes, truck only toll lanes, bus rapid transit lanes, reversible lanes, and express lanes.
- "Express Lanes" - A type of managed lane where dynamic pricing through electronic tolling is applied to lanes with through traffic, having fewer access points. Express lanes can co-locate within an existing non tolled facility to manage congestion and provide a more reliable trip time.

Section 338.166, F.S., authorizes the FDOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on HOT lanes or express lanes established on FDOT-owned facilities. The FDOT is authorized to continue to collect the tolls on HOT lanes or express lanes after any bond debt is discharged. Such tolls must first be used to pay the annual cost of

[16] The bill defines "contract" as a written agreement or purchase order issued for the purchase of goods or services or a written agreement for the receipt of state or federal financial assistance.
[17] The MDX email to committee staff April 18, 2017. (On file in the Senate Transportation Committee.)
[18] Section 316.0741(1)(a), F.S.
[19] Except that vehicles in HOT lanes must have three or more occupants. *See* the FDOT's SB 250 (2012) Agency Bill Analysis at 2. (On file in the Senate Transportation Committee.)
[20] On file in the Senate Transportation Committee. The directive expressly does not apply to Florida Turnpike facilities.

operation, maintenance, and improvement of the HOT lanes or express lanes project or associated transportation system. Section 338.166(4), F.S., authorizes variable rate tolling.

The FDOT must use any remaining toll revenue from HOT lanes or express lanes for the construction, maintenance, or improvement of any road on the State Highway System within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.

Section 338.166, F.S.,[21] expressly does not apply to the Turnpike System.[22] However, s. 338.2216(1)(d), F.S., directs the FTE to pursue and implement new technologies and processes in its operations and collection of tolls and other amounts associated with road infrastructure usage. Such technologies and processes must include variable pricing. [23]

Express Lane Management

A number of express lane projects in Florida are either in operation, under construction, or proposed.[24] These projects have or are planned to have express lanes with adjacent general use lanes (with no tolls) and, on the turnpike system, express lanes adjacent to general toll lanes (lanes that generally have fixed tolls). The FDOT describes its management of express lanes as follows:

> The express lanes are managed using a combination of eligibility, access, and pricing. Only two axle vehicles are eligible with buses eligible regardless of number of axles. This reduces the number of vehicles that can choose to use the express lanes. The access (entry and exit points on the express lanes) is limited to certain locations, providing a choice for users making longer distance trips to the major origin and destination patterns in the area. Trips that are shorter and more local must use the general use lanes. As the volume in the express lanes increases, the price to use the express lanes increases. The toll amount posted on the sign is dynamically priced based on the congestion in the express lanes with a goal of providing a free flow condition [in the express lanes].
>
> The traffic density, which is a combination of speed and volume, is used to determine the toll amount needed to optimize traffic flow in the express lanes. Volume and speed data is collected from roadside detectors and used to calculate the traffic density by dividing the volume in the express lanes by the speed in the express lanes. The toll amount is not related to the amount of congestion, speed, or performance of the general use lanes.

[21] Section 338.166(6), F.S.
[22] Section 338.2216(1)(a), F.S., grants to the FTE, in addition to the powers granted to the FDOT, full authority to exercise all powers granted to the FTE under chapter 338, F.S. Section 338.2216(4), F.S., provides the powers conferred upon the FTE under the Florida Turnpike Enterprise Law (ss. 338.22 – 338.241) are in addition and supplemental to the existing powers of the FDOT and the FTE.
[23] The FTE is not currently operating any express lanes. *See* the FDOT's SB 1570 (2012) Agency Bill Analysis, at 8. (On file in the Senate Transportation Committee.)
[24] *See* the project map with links to express lane project information available on the FDOT's website at: http://www.floridaexpresslanes.com/projects/project-map/. (Last visited March 19, 2017.)

> Where there is no congestion in the express lanes, regardless of the performance or amount of congestion in the general use lanes, the minimum toll amount in the express lanes is $0.50.[25]

The FDOT's general goal is that a driver in an express lane should be able to maintain an average speed of 45 miles per hour or greater while in the lane.[26]

Toll Collection Interoperability

Interoperable toll collection allows drivers to establish a single toll account that allows for payments on a variety of tolled facilities, regardless of the facility's ownership. An interoperable system recognizes a customer at any given toll collection facility participating in the system, and each toll facility owner or operator receives proper payment for use of the owner's or operator's facility.

The 2012 Moving Ahead for Progress in the 21st Century Act, MAP-21,[27] requires all toll facilities on Federal-aid highways to implement technologies or business practices that provide for the interoperability of electronic toll collection programs no later than four years after its enactment. Current Florida law requires all new limited access facilities and existing transportation facilities on which new or replacement electronic toll collection systems are installed to be interoperable with the FDOT's electronic toll-collection system.[28]

Level of Service

The Transportation Research Board (Board) is a division of the National Research Council, "which serves as an independent adviser to the federal government and others on scientific and technical questions of national importance, and which is jointly administered by the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine." The Board's mission "is to provide leadership in transportation innovation and progress through research and information exchange, conducted within a setting that is objective, interdisciplinary, and multimodal." [29]

The Board's 2010 Highway Capacity Manual (Manual), along with multiple other items, addresses level of service criteria for basic highway segments. Generally, level of service is a measure of traffic conditions "using a quantitative stratification of a performance measure or measures."[30] According to the Manual, , "A basic freeway segment can be characterized by three performance measures: density in passenger cars per mile per lane, space mean speed in miles per hour, and the ratio of demand flow rate to capacity." The Manual indicates that each measure "is an indication of how well traffic is being accommodated by the basic freeway segment."[31]

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[25] *Supra* note 6 at 2.
[26] The FDOT email to committee staff April 18, 2017. (On file in the Senate Transportation Committee.)
[27] Section 1512(b), P.L. 112-141.
[28] Section 338.01(7), F.S.
[29] *See* the National Academy website available at: http://www.trb.org/GetInvolvedwithTRB/GetInvolvedwithTRB.aspx. (Last visited April 19, 2017.)
[30] *See* the Federal Highway Administration's website, at 3.3.3, available at: https://safety.fhwa.dot.gov/road_diets/info_guide/ch3.cfm. (Last visited April 19, 2017.)
[31] *Highway Capacity Manual 2010,* at 11-7. (Copy on file in the Senate Transportation Committee.)

A letter grade is assigned to a given highway segment level of service, ranging from best performance at Level A to worst performance at Level F. The Manual describes the levels as follows:

- Level A: Free-flow operations. Free-flow speed (FFS) prevails on the freeway, and vehicles are almost completely unimpeded in their ability to maneuver within the traffic stream.
- Level B: Reasonably free-flow operations. FFS is maintained. The ability to maneuver is only slightly restricted.
- Level C: FFSs near the FFS of the freeway. Freedom to Maneuver is noticeably restricted.
- Level D: Speeds begin to decline with increasing flows, with density increasing more quickly. Freedom to maneuver is seriously limited.
- Level E: Operation at capacity. Operations on the freeway are highly volatile because there are virtually no usable gaps within the traffic stream, leaving little room to maneuver within the traffic.
- Level F: Breakdown, or unstable flow.[32]

Effect of Proposed Changes:

Section 1 amends s. 338.166(4), F.S., to authorize the FDOT to require use of an electronic transponder that is interoperable with the FDOT's electronic toll collection system for the use of HOT lanes or express lanes. Should the FDOT impose the requirement, all users of the FDOT's HOT lanes or express lanes must have the specified transponder to use the FDOT's HOT lanes or express lanes.[33]

The bill also creates a new subsection (5) of s. 338.166, F.S. Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the minimum express lane toll. The bill defines a customer's express lane average travel speed as the customer's average travel speed from the customer's entry point to the customer's exit point. This revision will reduce the FDOT's toll collection revenues, dependent on the number of trips and the number of times a customer's average travel speed falls below 40 miles per hour.

Section 2 amends s. 338.2216(1)(d), F.S., to authorize the FTE to require use of an electronic transponder that is interoperable with the FDOT's electronic toll collection system for the use of express lanes on the turnpike system. Should the FTE impose the requirement, all users of express lanes on the turnpike system must have the specified transponder to use the express lanes.[34]

The bill prohibits variable pricing in express lanes when the level of service in the express lane, determined in accordance with the Transportation Research Board Highway Capacity Manual

[32] *Id.*
[33] SunPass registrants may already use HOT lanes and express lanes. The FDOT announced in 2014 that Florida's SunPass, Georgia's Peach Pass, and North Carolina's Quick Pass are interoperable and valid in all three states. *See* the FDOT's November 2014 News Release available at: https://www.sunpass.com/pdf/FLGANCValid.pdf. (Last visited April 19. 2017.) Should the requirement be imposed, holders of the associated transponders would appear to be able to use HOT lanes or express lanes. If a user wishing to use HOT lanes or express lanes holds no pass from an interoperable state, it appears that user would have to register and create a SunPass account in order to receive a transponder.
[34] *Id.*

(5th Edition, HCM 2010), as amended, is equal to level of service A. When the level of service in the express lane is level of service B, variable pricing in the express lane may only be implemented by charging the general toll lane toll amount plus 25 cents. Pricing in express lanes when the level of service is other than level of service A or service B may vary in the manner established by the FTE to manage congestion in the express lanes, with an exception: Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the general toll lane toll amount plus 25 cents. A customer's express lane average travel speed is also defined as the customer's average travel speed from the customer's entry point to the customer's exit point.

This revision will reduce the FTE's, and therefore the FDOT's, toll collection revenues, dependent on the number of trips, the frequency of the existence of Level of Service A or B in the express lanes on the turnpike system, and the number of times a customer's average travel speed falls below 40 miles per hour.

Turnpike Toll Revenues/Miami-Dade, Broward, and Palm Beach Counties (Section 3)

Present Situation:

Section 338.231, F.S., directs the FDOT at all times to fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system; and to create reserves for these purposes.

In 1997, the Legislature enacted legislation[35] currently located in s. 338.231(3)(a), F.S. For the period July 1, 1998, through June 30, 2017, the FDOT is required, to the maximum extent feasible, to program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Miami-Dade County, Broward County, and Palm Beach County, compared to total turnpike toll and bond financed commitments, is at least 90 percent of the share of net toll collections attributable to users of the turnpike system in those counties, as compared to total net toll collections attributable to users of the turnpike system.[36]

Effect of Proposed Changes:

Section 3 amends s. 338.231(3)(a), F.S., currently set to expire on June 30 of this year, by extending the expiration date to June 30, 2027. The FDOT advises this revision requires no change in its current programming practice

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

[35] Chapter 97-280, L.O.F.

[36] This provision expressly does not apply when its application would violate any bond covenant relating to the issuance of turnpike bonds.

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:

Users of the MDX's facilities may see a reduction in the frequency and amount of toll increases. Eligible SunPass users of the MDX's toll facilities would benefit from a reduction in toll charges up to 10 percent, should the MDX chose to grant the reduction. The amount of this reduction is dependent on the number of eligible trips on MDX toll facilities, and is therefore unknown.

Users of facilities in Miami-Dade County may benefit from municipal or county transportation- or transit-related expenses funded by a portion of the MDX's surplus revenues. The MDX system may benefit from the same funded expenses. The amount, however, is indeterminate, as the funds available for such expenses are indeterminate.

Users of the FDOT's HOT lanes or express lanes, and users of the FTE's express lanes, may experience reduced tolls. The amount of this reduction with respect to the FDOT's HOT lanes or express lanes is dependent on the number of trips and the number of times a customer's average travel speed falls below 40 miles per hour, and is therefore unknown. The amount of this reduction with respect to express lanes on the turnpike system is dependent on the number of trips, the frequency of the existence of Level of Service A or B in the express lanes, and the number of times a customer's average travel speed falls below 40 miles per hour; and is therefore unknown.

C. Government Sector Impact:

The MDX is an independent agency of the state. The bill will potentially make it more difficult for the MDX to increase its tolls, making it more difficult to increase its revenues. According to the MDX, the bill limits its ability to set toll rates, which may

make its bonds less favorable in the financial markets.[37] If the MDX chooses to grant up to a 10 percent reduction in toll charges for eligible SunPass users of the MDX's toll facilities, the MDX may experience reduced toll collections in an indeterminate amount.

The bill also limits the MDX's administrative expenses to ten percent above the annual state average of administrative costs, as determined by the FTC. The impact of this revision to the MDX is unknown. .The FTC will incur administrative expenses associated with determining the annual state average of administrative costs and with any rulemaking.

The bill will reduce the amount of surplus revenues available to the MDX for use on the MDX's facilities, to the extent that a portion of the surplus revenues is used to fund transportation- or transit-related expenses in proposals submitted by municipalities and counties. The amount, however, is indeterminate, as it is dependent on the percentage of the surplus revenues dedicated to the specified expenses.

The MDX may incur expenses associated with the required traffic and revenue studies and placing the required documents on its website.

The bill may reduce FDOT revenues. FDOT will be required to charge the minimum express lane toll for HOT lanes if the customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the minimum express lane toll.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 338.166, 338.2216, 338.231, and 348.0004.

This bill creates section 348.00115 of the Florida Statutes.

[37] *See* the MDX email to House Transportation & Infrastructure Committee Staff, March 10, 2017. (On file in the Senate Transportation Committee.)

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 18, 2017:
The CS adds the following provisions to the bill:

- The FDOT is authorized to require use of an electronic transponder interoperable with the FDOT's electronic toll collection system for the use of its HOT lanes or express lanes.
- Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the minimum express lane toll.
- The FTE is authorized to require use of an electronic transponder interoperable with the FDOT's electronic toll collection system for the use of express lanes on the turnpike system.
- Variable pricing may not be implemented in express lanes on the turnpike system when the level of service in the express lane is equal to level of service A, and may only be implemented when the level of service in the express lane is level of service B by charging the general toll lane toll amount plus 25 cents.
- Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane on the turnpike system falls below 40 miles per hour, the customer must be charged the general toll lane toll amount plus 25 cents.
- The amount of toll revenues used for administrative expenses by the MDX may not be greater than ten percent above the annual state average of administrative costs based on the annual administrative expenses of all the expressway authorities of the state, as determined by the FTC. The FTC is authorized to adopt necessary rules to implement this provision.
- The MDX is authorized to reduce the toll charged at the time that any toll is incurred by up to ten percent for certain SunPass registrants and prohibited from imposing requirements not specified in the bill for receipt of the reduced toll amount.
- The MDX is required to determine its surplus revenues, calculated as specified, and dedicate at least ten percent, but not more than 30 percent, of the remaining surplus revenues to transportation- and transit-related expenses for projects in municipalities and counties in which the MDX operates under specified conditions.
- The MDX is required to have an audit conducted by an independent third party not less than biennially.

CS by Transportation on March 22, 2017:
The CS makes the following changes to the bill:

- Clarifies that the distance of five miles is required between main through-lane tolling points, excluding entry and exit ramps;
- Requires the MDX to reduce the toll charged on any of its toll facilities by 25 percent for SunPass registrants in good standing; and
- Prohibits the MDX from imposing additional requirements for receipt of the reduced toll amount.

B. Amendments:

None.

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
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The Committee on Appropriations (Brandes and Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (5) and (6) of section 338.166, Florida Statutes, are redesignated as subsections (6) and (7), respectively, subsection (4) is amended, and a new subsection (5) is added to that section, to read:

338.166 High-occupancy toll lanes or express lanes.—

(4) The department may implement variable rate tolls on

high-occupancy toll lanes or express lanes. The department may require the use of an electronic transponder interoperable with the department's electronic toll collection system for the use of high-occupancy toll lanes or express lanes.

(5) Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the minimum express lane toll. A customer's express lane average travel speed is his or her average travel speed from the customer's entry point to the customer's exit point.

Section 2. Paragraph (d) of subsection (1) of section 338.2216, Florida Statutes, is amended, and paragraph (e) is added to that subsection, to read:

338.2216 Florida Turnpike Enterprise; powers and authority.—

(1)

(d) The Florida Turnpike Enterprise shall pursue and implement new technologies and processes in its operations and collection of tolls and the collection of other amounts associated with road and infrastructure usage. Such technologies and processes must include, without limitation, video billing and variable pricing. The Florida Turnpike Enterprise may require the use of an electronic transponder interoperable with the department's electronic toll collection system for the use of express lanes on the turnpike system. Variable pricing may not be implemented in express lanes when the level of service in the express lane, determined in accordance with the criteria established by the Transportation Research Board Highway Capacity Manual (5th Edition, HCM 2010), as amended from time to

time, is equal to level of service A. Variable pricing in express lanes when the level of service in the express lane is level of service B may only be implemented by charging the general toll lane toll amount plus an amount set by department rule. Except as otherwise provided in this subsection, pricing in express lanes when the level of service is other than level of service A or level of service B may vary in the manner established by the Florida Turnpike Enterprise to manage congestion in the express lanes.

(e) Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the general toll lane toll amount plus an amount set by department rule. A customer's express lane average travel speed is his or her average travel speed from the customer's entry point to the customer's exit point.

Section 3. Paragraph (a) of subsection (3) of section 338.231, Florida Statutes, is amended to read:

338.231 Turnpike tolls, fixing; pledge of tolls and other revenues.—The department shall at all times fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system as the same become due and payable; and to create reserves for all such purposes.

(3)(a) For the period July 1, 1998, through June 30, 2027

~~2017~~, the department shall, to the maximum extent feasible, program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Miami-Dade County, Broward County, and Palm Beach County as compared to total turnpike toll and bond financed commitments shall be at least 90 percent of the share of net toll collections attributable to users of the turnpike system in Miami-Dade County, Broward County, and Palm Beach County as compared to total net toll collections attributable to users of the turnpike system. This subsection does not apply when the application of such requirements would violate any covenant established in a resolution or trust indenture relating to the issuance of turnpike bonds. The department may at any time for economic considerations establish lower temporary toll rates for a new or existing toll facility for a period not to exceed 1 year, after which the toll rates adopted pursuant to s. 120.54 shall become effective.

Section 4. Present subsections (6) through (9) of section 348.0004, Florida Statutes, are redesignated as subsections (7) through (10), respectively, paragraph (e) of subsection (2) of that section is amended, and a new subsection (6) and subsections (11), (12), and (13) are added to that section, to read:

348.0004 Purposes and powers.—

(2) Each authority may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its purposes, including, but not limited to, the following rights and powers:

(e) To fix, alter, charge, establish, and collect tolls,

rates, fees, rentals, and other charges for the services and facilities system, which tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act. However, such right and power may be assigned or delegated by the authority to the department.

1. Notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any indebtedness outstanding on July 1, 2017, in any county as defined in s. 125.011(1):

a. The authority may not increase a toll unless the increase is justified to the satisfaction of the authority by a traffic and revenue study conducted by an independent third party, except for an increase to the extent necessary to adjust for inflation pursuant to the procedure for toll rate adjustments provided in s. 338.165.

b. A toll increase must be approved by a two-thirds vote of the expressway authority board.

c. The amount of toll revenues used for administrative expenses by the authority may not be greater than 10 percent above the annual state average of administrative costs determined as provided in this sub-subparagraph. The Florida Transportation Commission shall determine the annual state average of administrative costs based on the annual administrative expenses of all the expressway authorities of this state. For purposes of this sub-subparagraph, administrative expenses include, but are not limited to, employee salaries and benefits, small business outreach, insurance, professional service contracts not directly related

to the operation and maintenance of the expressway system, and other overhead costs. The commission may adopt rules necessary for the implementation of this sub-subparagraph.

d. On transportation facilities constructed after July 1, 2017, there must be a distance of at least 5 miles between main through lane tolling points. The distance requirement of this sub-subparagraph does not apply to entry and exit ramps.

2. Notwithstanding s. 338.165 or any other provision of law to the contrary, in any county as defined in s. 125.011(1), to the extent surplus revenues exist, they may be used for purposes enumerated in subsection (8) ~~(7)~~, provided the expenditures are consistent with the metropolitan planning organization's adopted long-range plan.

3. Notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any outstanding indebtedness payable from tolls, in any county as defined in s. 125.011(1), the board of county commissioners may, by ordinance adopted on or before September 30, 1999, alter or abolish existing tolls and currently approved increases thereto if the board provides a local source of funding to the county expressway system for transportation in an amount sufficient to replace revenues necessary to meet bond obligations secured by such tolls and increases.

(6) Subject to compliance with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act, an authority in any county as defined in s. 125.011(1) shall, at the time that any toll is incurred, reduce the toll charged on any of the authority's toll facilities by at

least 5 percent, but not more than 10 percent, for each SunPass registrant having an account in good standing and having the license plate of the vehicle or vehicles incurring the toll registered to the SunPass account at the time the toll is incurred. The authority may not impose additional requirements for receipt of the reduced toll amount.

(11) Notwithstanding any other provision of the Florida Expressway Authority Act, an authority in any county as defined in s. 125.011(1) shall determine its surplus revenues as defined in s. 348.0002(12). The authority shall then dedicate at least 20 percent, but not more than 50 percent, of the annual surplus revenues to transportation- and transit-related expenses for projects in the area served by the authority. The metropolitan planning organization for any county as defined in s. 125.011(1) shall annually select a project or projects within the county to be funded by the authority's dedicated surplus revenues as provided in this subsection and provide to the authority a list reflecting the selected project or projects. The authority shall select from the list for funding from the authority's dedicated surplus revenues transportation- and transit-related expenses that have a rational nexus to the transportation facilities of the authority and may include, but are not limited to, expenses associated with the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of public transportation facilities, transit facilities, intermodal facilities, or multimodal corridors owned or operated by such municipality or county; and transit-related expenses that impact the capacity or use of the transportation facilities of the authority. For the purpose of this subsection,

a rational nexus must demonstrate that the proposed transportation expenditure makes a substantial impact on the capacity or use of the transportation facilities of the authority, or that the proposed transit expenditure complements the operation of, or expands the access to, the transportation facilities of the authority.

(12) A county as defined in s. 125.011(1) must have a financial audit of the revenues and expenditures of the county's transportation plan conducted by an independent third party not less than biennially and must post the audits on the county's website to be eligible to receive the dedicated surplus revenues as provided in subsection (11).

(13) An authority established in any county as defined in 125.011(1) must have a financial audit conducted by an independent third party not less than biennially, and the audit report must be made publicly available on the authority's website.

Section 5. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to limited access and toll facilities; amending s. 338.166, F.S.; authorizing the Department of Transportation to require the use of an electronic transponder interoperable with the department's electronic toll collection system for the use of high-

occupancy toll lanes or express lanes; requiring, as of a specified date, that a customer be charged the minimum express lane toll if his or her average travel speed for a trip in an express lane falls below a specified rate; providing measurement of a customer's express lane average travel speed; amending s. 338.2216, F.S.; authorizing the Florida Turnpike Enterprise to require the use of an electronic transponder interoperable with the department's electronic toll collection system for the use of express lanes on the turnpike system; prohibiting variable pricing from being implemented in express lanes when the level of service in the express lane, determined in accordance with specified criteria, is equal to level of service A; specifying that variable pricing in express lanes when the level of service in the express lane is level of service B may only be implemented by charging the general toll lane toll amount plus an amount set by department rule; providing that pricing in express lanes when the level of service is other than level of service A or level of service B may vary in the manner established by the Florida Turnpike Enterprise to manage congestion in the express lanes; requiring, as of a specified date, that a customer be charged a general toll lane toll amount plus an amount set by department rule if his or her average travel speed for a trip in an express lane falls below a specified rate; providing for measurement of a customer's express lane average

travel speed; amending s. 338.231, F.S.; extending the timeframe during which the department must program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Miami-Dade County, Broward County, and Palm Beach County are at least a specified percent of a certain share of certain net toll collections; amending s. 348.0004, F.S.; providing applicability; requiring toll increases by authorities in certain counties to be justified by an independent study by a third party; providing an exception for an increase to adjust for inflation pursuant to a specified procedure for toll rate adjustments; requiring toll increases to be approved by a specified margin in a vote of the expressway authority board; prohibiting the amount of toll revenues used for administrative expenses by the authority from being greater than a specified percentage above the annual state average of administrative costs; requiring the Florida Transportation Commission to determine the annual state average of administrative costs based on the annual administrative expenses of all the expressway authorities of this state; authorizing the commission to adopt certain rules; requiring a specified distance between main through-lane tolling points on transportation facilities constructed after a specified date; providing applicability; conforming a cross-reference; requiring authorities in certain counties to reduce toll charges by a specified amount

at the time that any toll is incurred for certain SunPass registrants, subject to certain requirements; prohibiting such authorities from imposing additional requirements for receipt of the reduced toll amount; requiring an authority in certain counties to determine its surplus revenues and dedicate a certain amount of the annual surplus revenues to transportation- and transit-related expenses for projects in the area served by the authority; requiring the metropolitan planning organization for certain counties to annually select a project or projects within the counties to be funded by the authority's dedicated surplus revenues and provide to the authority a list reflecting the selected project or projects; requiring the authority to select from the list for funding from the authority's dedicated surplus revenues transportation- and transit-related expenses that have a rational nexus to the transportation facilities of the authority; requiring a rational nexus to demonstrate that the proposed transportation expenditure makes a substantial impact on the capacity or use of the transportation facilities of the authority or that the proposed transit expenditure complements the operation of, or expands the access to, the transportation facilities of the authority; requiring certain counties to have a financial audit of the revenues and expenditures of the county's transportation plan conducted by an independent third party not less than biennially and

to post the audits on the counties' websites to be eligible to receive the dedicated surplus revenues; requiring that an authority established in certain counties have an audit conducted by an independent third party not less than biennially; requiring the audit report be made publicly available on the authority's website; providing an effective date.

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

A bill to be entitled

An act relating to limited access and toll facilities; amending s. 338.166, F.S.; authorizing the department to require use of an electronic transponder interoperable with the department's electronic toll collection system for the use of high-occupancy toll lanes or express lanes; requiring, as of a specified date, that a customer be charged the minimum express lane toll if his or her average travel speed for a trip in an express lane falls below a specified rate; providing for measurement of a customer's express lane average travel speed; amending s. 338.2216, F.S.; authorizing the Florida Turnpike Enterprise to require use of an electronic transponder interoperable with the department's electronic toll collection system for the use of express lanes on the turnpike system; prohibiting variable pricing from being implemented in express lanes when the level of service in the express lane, determined in accordance with specified criteria, is equal to level of service A; specifying that variable pricing in express lanes when the level of service in the express lane is level of service B may only be implemented by charging the general toll lane toll amount plus a specified amount; providing that pricing in express lanes when the level of service is other than level of service A or B may vary

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in the manner established by the Florida Turnpike Enterprise to manage congestion in the express lanes; requiring, as of a specified date, that a customer be charged a general toll lane toll amount plus a specified amount if his or her average travel speed for a trip in an express lane falls below a specified rate; providing for measurement of a customer's express lane average travel speed; amending s. 338.231, F.S.; extending the timeframe during which the Department of Transportation must program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Miami-Dade County, Broward County, and Palm Beach County are at least a specified percent of a certain share of certain net toll collections; amending s. 348.0004, F.S.; providing applicability; requiring toll increases by authorities in certain counties to be justified by an independent study by a third party; providing an exception for an increase to adjust for inflation pursuant to a specified procedure for toll rate adjustments; requiring toll increases to be approved by a specified margin in a vote of the expressway authority board; prohibiting the amount of toll revenues used for administrative expenses by the authority from being greater than a specified percentage above the annual state average of administrative costs; requiring the Florida Transportation Commission to determine the annual state average of administrative costs based on the

annual administrative expenses of all the expressway authorities of this state; authorizing the commission to adopt certain rules; conforming a cross-reference; authorizing authorities in certain counties to reduce toll charges up to a specified amount at the time that any toll is incurred for certain SunPass registrants, subject to certain requirements; prohibiting such authorities from imposing additional requirements for receipt of the reduced toll amount; requiring an authority in certain counties to determine its surplus revenues and deduct from the surplus revenues a prudent reserve as determined by the board; requiring such authority to dedicate a certain amount of the remaining surplus revenues after the deduction of a prudent reserve to transportation- and transit-related expenses for projects in municipalities and counties in which the authority operates; authorizing the authority to determine which specific transportation- and transit-related expenses to fund from proposals submitted by municipalities and counties; requiring the transportation- and transit-related expenses funded to have a rational nexus to the transportation facilities of the authority; requiring a rational nexus to demonstrate that the proposed transportation expenditure makes a substantial impact on the capacity or use of the transportation facilities of the authority or that the proposed transit expenditure complements the operation of, or expands the access to, the transportation facilities of the authority;

requiring that an authority established in certain counties have an audit conducted by an independent third party not less than biennially; requiring the audit report be made publicly available on the authority's website; creating s. 348.00115, F.S.; requiring authorities in certain counties to post certain information on a website; defining the term "contract"; providing an effective date.

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

Section 1. Present subsections (5) and (6) of section 338.166, Florida Statutes, are redesignated as subsections (6) and (7), respectively, subsection (4) is amended, and a new subsection (5) is added to that section, to read:

338.166 High-occupancy toll lanes or express lanes.—

(4) The department may implement variable rate tolls on high-occupancy toll lanes or express lanes. The department may require use of an electronic transponder interoperable with the department's electronic toll collection system for the use of high-occupancy toll lanes or express lanes.

(5) Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the minimum express lane toll. A customer's express lane average travel speed is his or her average travel speed from the customer's entry point to the customer's exit point.

Section 2. Paragraph (d) of subsection (1) of section 338.2216, Florida Statutes, is amended, and paragraph (e) is

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added to that subsection, to read:

338.2216 Florida Turnpike Enterprise; powers and authority.—

(1)

(d) The Florida Turnpike Enterprise shall pursue and implement new technologies and processes in its operations and collection of tolls and the collection of other amounts associated with road and infrastructure usage. Such technologies and processes must include, without limitation, video billing and variable pricing. The Florida Turnpike Enterprise may require use of an electronic transponder interoperable with the department's electronic toll collection system for the use of express lanes on the turnpike system. Variable pricing may not be implemented in express lanes when the level of service in the express lane, determined in accordance with the criteria established by the Transportation Research Board Highway Capacity Manual (5th Edition, HCM 2010), as amended from time to time, is equal to level of service A. Variable pricing in express lanes when the level of service in the express lane is level of service B may only be implemented by charging the general toll lane toll amount plus 25 cents. Except as otherwise provided in this subsection, pricing in express lanes when the level of service is other than level of service A or service B may vary in the manner established by the Florida Turnpike Enterprise to manage congestion in the express lanes.

(e) Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the general toll lane toll amount plus 25 cents. A customer's express lane average travel

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speed is his or her average travel speed from the customer's entry point to the customer's exit point.

Section 3. Paragraph (a) of subsection (3) of section 338.231, Florida Statutes, is amended to read:

338.231 Turnpike tolls, fixing; pledge of tolls and other revenues.—The department shall at all times fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system as the same become due and payable; and to create reserves for all such purposes.

(3)(a) For the period July 1, 1998, through June 30, 2027 ~~2017~~, the department shall, to the maximum extent feasible, program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Miami-Dade County, Broward County, and Palm Beach County as compared to total turnpike toll and bond financed commitments shall be at least 90 percent of the share of net toll collections attributable to users of the turnpike system in Miami-Dade County, Broward County, and Palm Beach County as compared to total net toll collections attributable to users of the turnpike system. This subsection does not apply when the application of such requirements would violate any covenant established in a resolution or trust indenture relating to the issuance of turnpike bonds. The department may at any time for economic considerations establish lower temporary toll rates for

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a new or existing toll facility for a period not to exceed 1 year, after which the toll rates adopted pursuant to s. 120.54 shall become effective.

Section 4. Present subsections (6) through (9) of section 348.0004, Florida Statutes, are redesignated as subsections (7) through (10), respectively, paragraph (e) of subsection (2) of that section is amended, and a new subsection (6), and subsections (11) and (12) are added to that section, to read:

348.0004 Purposes and powers.—

(2) Each authority may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its purposes, including, but not limited to, the following rights and powers:

(e) To fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system, which tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act. However, such right and power may be assigned or delegated by the authority to the department.

1. Notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any indebtedness outstanding on July 1, 2017, in any county as defined in s. 125.011(1):

a. The authority may not increase a toll unless the increase is justified to the satisfaction of the authority by a traffic and revenue study conducted by an independent third party, except for an increase to the extent necessary to adjust for inflation pursuant to the procedure for toll rate

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adjustments provided in s. 338.165.

b. A toll increase must be approved by a two-thirds vote of the expressway authority board.

c. The amount of toll revenues used for administrative expenses by the authority may not be greater than 10 percent above the annual state average of administrative costs determined as provided in this sub-subparagraph. The Florida Transportation Commission shall determine the annual state average of administrative costs based on the annual administrative expenses of all the expressway authorities of this state. For purposes of this sub-subparagraph, administrative expenses include, but are not limited to, employee salaries and benefits, small business outreach, insurance, professional service contracts not directly related to the operation and maintenance of the expressway system, and other overhead costs. The commission may adopt rules necessary for the implementation of this sub-subparagraph.

2. Notwithstanding s. 338.165 or any other provision of law to the contrary, in any county as defined in s. 125.011(1), to the extent surplus revenues exist, they may be used for purposes enumerated in subsection (8) ~~(7)~~, provided the expenditures are consistent with the metropolitan planning organization's adopted long-range plan.

3. Notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any outstanding indebtedness payable from tolls, in any county as defined in s. 125.011(1), the board of county commissioners may, by ordinance adopted on or before September 30, 1999, alter or abolish existing tolls and

currently approved increases thereto if the board provides a local source of funding to the county expressway system for transportation in an amount sufficient to replace revenues necessary to meet bond obligations secured by such tolls and increases.

(6) Subject to compliance with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act, an authority in any county as defined in s. 125.011(1) may, at the time that any toll is incurred, reduce the toll charged on any of the authority's toll facilities by up to 10 percent for each SunPass registrant having an account in good standing and having the license plate of the vehicle or vehicles incurring the toll registered to the SunPass account at the time the toll is incurred. The authority may not impose additional requirements for receipt of the reduced toll amount.

(11) Notwithstanding any other provision of the Florida Expressway Authority Act, an authority in any county as defined in s. 125.011(1) shall determine its surplus revenues as defined in s. 348.0002(12) and deduct from the surplus revenues a prudent reserve as determined by the board. The authority shall then dedicate at least 10 percent, but not greater than 30 percent, of the remaining surplus revenues after the deduction of a prudent reserve to transportation- and transit-related expenses for projects in municipalities and counties in which the authority operates. The authority may determine which specific transportation- and transit-related expenses to fund from proposals submitted by municipalities and counties. Transportation- and transit-related expenses funded pursuant to this subsection must have a rational nexus to the transportation

facilities of the authority and may include, but are not limited to, expenses associated with the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of public transportation facilities, transit facilities, intermodal facilities, or multimodal corridors owned or operated by such municipality or county, and transit-related expenses that impact the capacity or use of the transportation facilities of the authority. For the purpose of this subsection, a rational nexus must demonstrate that the proposed transportation expenditure makes a substantial impact on the capacity or use of the transportation facilities of the authority, or that the proposed transit expenditure complements the operation of, or expands the access to, the transportation facilities of the authority.

(12) An authority established in any county as defined in 125.011(1) must have an audit conducted by an independent third party not less than biennially, and the audit report must be made publicly available on the authority's website.

Section 5. Section 348.00115, Florida Statutes, is created to read:

348.00115 Public accountability.—An expressway authority in a county as defined in s. 125.011(1) shall post the following information on its website:

(1) Audited financial statements and any interim financial reports.

(2) Board and committee meeting agendas, meeting packets, and minutes.

(3) Bond covenants for any outstanding bond issues.

(4) Authority budgets.


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(5) Authority contracts. For purposes of this subsection, the term "contract" means a written agreement or purchase order issued for the purchase of goods or services or a written agreement for the receipt of state or federal financial assistance.

(6) Authority expenditure data, which must include the name of the payee, the date of the expenditure, and the amount of the expenditure. Such data must be searchable by name of the payee, name of the paying agency, and fiscal year and must be downloadable in a format that allows offline analysis.

(7) Information relating to current, recently completed, and future projects on authority facilities.

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 1562
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Garcia
SUBJECT:	Expressway Authorities
DATE:	April 26, 2017
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1562 prohibits the Miami-Dade County Expressway Authority (MDX), subject to certain requirements, from increasing its tolls unless justified by an independent traffic and revenue study, except to the extent necessary to adjust for inflation. The MDX must approve toll increases by a two-thirds vote of its board members. The bill limits the amount of toll revenues used by the MDX for administrative expenses to not greater than ten percent above the annual state average of administrative costs. The Florida Transportation Commission (FTC) is directed to determine the annual state average of administrative costs based on the annual administrative expenses, as defined, of all expressway authorities of this state, and is authorized to adopt rules. The bill requires a distance of five miles between main through-lane tolling points on transportation facilities constructed after July 1, 2017. Subject to any bond covenants, the bill requires the MDX to reduce by at least five percent, but not more than ten percent, the toll charged for SunPass users of its facilities at the time the toll is incurred.

The bill requires the MDX to dedicate at least 20 percent, but not greater than 50 percent, of certain surplus revenues to transportation- and transit-related expenses for projects in the MDX's service area. The metropolitan planning organization (MPO) for Miami-Dade County is directed to annually select and list a project or projects within the county to be funded by the MDX's dedicated revenues, with the MDX selecting from the list those transportation- and transit-related expenses that have a rational nexus, as defined, to the MDX's transportation facilities. Miami-

Dade County is required to have periodic financial audits of the revenues and expenditures of the county's transportation plan conducted by an independent third party at least biennially, and to post the audits on the county's website, to be eligible to receive the MDX's dedicated surplus revenues. The MDX is required to have periodic audits conducted by an independent third party, and to post the audit reports on its website.

Additionally, the bill authorizes the FDOT to require use of an electronic transponder interoperable with the FDOT's electronic toll collection system for the use of high-occupancy toll (HOT) lanes or express lanes. Effective July 1, 2018, the bill requires the FDOT to charge a customer the minimum express lane toll if the customer's average travel speed falls below 40 miles per hour.

The FTE is authorized to require use of an electronic transponder interoperable with the FDOT's electronic toll collection system for the use of express lanes on the turnpike system. Implementation of variable pricing in express lanes on the turnpike system is restricted based on certain level-of-service or highway capacity criteria. Effective July 1, 2018, the bill requires that a customer be charged a general toll lane toll amount plus 25 cents if the customer's average travel speed falls below 40 miles per hour.

The bill also extends the time frame during which the FDOT is required to program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Miami-Dade, Broward, and Palm Beach Counties is at least 90 percent of the share of net toll collections attributable to users of the turnpike system in those counties, as compared to total net toll collections attributable to users of the turnpike system.

The bill may reduce FDOT revenues by an indeterminate, but insignificant amount, related to the reduced toll for certain travelers of express lanes. The fiscal impact of the bill to the MDX is indeterminate, but insignificant, related to administrative expenses. See Section V., "Fiscal Impact Statement," for further details.

The bill takes effect July 1, 2017, except as otherwise provided.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the effect of proposed changes.

III. Effect of Proposed Changes:

Miami-Dade County (Sections 4 and 5)

Present Situation:

Section 125.011(1), F.S. defines a county as: "[A]any county operating under a home rule charter adopted pursuant to Art. VIII, ss. 10, 11, and 24 of the State Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the State Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred."

The local governments authorized to operate under a home rule charter by the State Constitutions of 1885 and 1968 are the City of Key West and Monroe County,[1] Dade County,[2] and Hillsborough County.[3] Of these, only Miami-Dade County operates under a home-rule charter, which was adopted on May 21, 1957, under this constitutional provision.[4]

Miami-Dade County Expressway Authority

The Florida Expressway Authority Act (Act)[5] authorizes any county or two or more contiguous counties within a single Florida Department of Transportation (FDOT) district, by resolution adopted by the board of county commissioners, to form an expressway authority, which is an agency of the state.[6] The Miami-Dade County Commission adopted ordinance 94-215 in 1994 creating the Miami-Dade County Expressway Authority (MDX).[7] The MDX is the only expressway authority created under the Act.

The MDX's system[8] consists of the following roadways in Miami-Dade County:
- Airport Expressway (SR 112):
- Dolphin Expressway (SR 836);
- Don Shula Expressway (SR 874);
- Snapper Creek Expressway (SR 878); and
- Gratigny Parkway (SR 924).

MDX Governing Board

Section 348.0003(2)(d), F.S., F.S., provides that in any county as defined in s. 125.011(1), the authority's governing body consists of up to nine members, and the following provisions specifically apply. Except for the district secretary of the FDOT, authority members must be residents of the county. Five voting members are appointed by the governing body of the county. At the discretion of the governing body of the county, up to two of these members may be elected officials residing in the county. Three voting members are appointed by the Governor. One member is the FDOT district secretary in the district that contains such county, who is an ex officio voting member of the authority.

Purposes and Powers

Section 348.0004, F.S., provides the purposes and powers of expressway authority's created in part I of Ch. 348, F.S. Section 348.0004(2)(e), F.S., gives expressway authorities created under the Act the power to fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system, which tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds

[1] FLA. CONST. art. VIII, s. 6, n. 2.
[2] FLA. CONST. art. VIII, s. 6, n. 3.
[3] FLA. CONST. art. VIII, s. 6, n. 4.
[4] Florida Association of Counties, Charter County Information, https://www.fl-counties.com/charter-county-information#. (Last visited March 19, 2017.)
[5] Part I of Ch. 348, F.S.
[6] Section 348.0003(1), F.S
[7] A copy of the ordinance is available at http://miamidade.fl.elaws.us/code/coor/coor_ptiii_ch2_artxviii/. (Last visited March 19, 2017.)
[8] See MDX System Map available at http://mdxway.com/about/expressway-map(last visited March 19, 2017).

issued pursuant to the Florida Expressway Authority Act.[9] However, such right and power may be assigned or delegated by the authority to the FDOT. As provided in s. 348.004(7), F.S., and after a public hearing and county approval, the MDX may use surplus toll revenues to fund:

- County public transportation facilities;
- Intermodal facilities;
- Multimodal corridors, including bicycle facilities or greenways that improve transportation services in the county; or
- Any programs or projects that improve the expressway system's level of service.

These expenditures must be consistent with the metropolitan planning organization's adopted long-range plan.

MDX Frequent Drivers Rewards Program

The MDX currently offers frequent users a rewards program, the operation of which the MDX describes as follows:

> Each fiscal year (July 1st to June 30th) after the close of its financial books, MDX will declare a toll distribution of dividends to members of the Frequent Driver Rewards Program. This is after the agency meets its financial obligations, including making its annual principal and interest payments, meeting its senior debt coverage ratio, and covering its operation and maintenance costs. MDX will give back those savings generated by operational efficiencies of the agency directly to its customers through the Frequent Driver Rewards Program.[10]

To participate in the program, MDX customers must register each year, be a SunPass customer in good standing, have a two-axle vehicle, and spend at least $100 annually between July 1st to June 30 in tolls per transponder on any of the MDX's five expressways. Any tolls paid using Toll-By-Plate[11] or Image Toll transactions (IToll) are considered ineligible for the annual calculation. Eligibility of SunPass tolls paid during the fiscal year is determined solely by the MDX. The most recent registration period for tolls paid between July 1, 2016, to June 30, 2017, ended on March 31, 2017. Reward checks to eligible recipients are expected in December of 2017. [12]

Procedure for Toll Rate Adjustments for Inflation

Section 338.165(3), F.S., requires the FDOT and the Florida Turnpike Enterprise (FTE) to index toll rates on their existing toll facilities to the annual Consumer Price Index or similar inflation

[9] Section 348.0010, F.S., provides a covenant of the state relating to the Florida Expressway Authority Act. In that statute the state pledges that it will not limit or alter the rights vested in an authority and FDOT until all bonds, together with their interest, are fully paid and discharged.
[10] *See* the MDX website available at: http://mdxway.com/frequentdriver/faqs. (Last visited March 19, 2017.)
[11] Toll-By-Plate is an FDOT image-based electronic toll collection system that uses photographic images of the vehicles license plate to identify the customer responsible for payment. This feature is available on the Homestead Extension of Florida's Turnpike from Florida City to Miramar in Miami-Dade County. *See* the FDOT website available at: https://www.tollbyplate.com/index. (Last visited March 20, 2017.)
[12] *Supra* note 22.

indicators. Toll adjustments for inflation may be made no more than once a year, and no less than once every five years, as necessary to accommodate cash toll rate schedules. Toll rates may be increased beyond these limits as directed by bond documents, covenants, or governing body authorization or pursuant to an FDOT rule.

Effect of Proposed Changes:

Section 4 amends s. 348.0004(2)(e), F.S., to provide that the MDX, notwithstanding any law to the contrary, and subject to any contractual requirements contained in documents securing indebtedness outstanding on July 1, 2017:

- May not increase a toll unless the increase is justified to the MDX's satisfaction by a traffic and revenue study conducted by an independent third party, except for an increase to the extent necessary to adjust for inflation under the toll rate adjustment procedures in s. 338.165, F.S.; and

Must approve a toll increase by a two-thirds vote of the MDX governing board.
The amount of toll revenues used by the MDX for administrative expenses may not be more than 10 percent above the annual state average of administrative costs, determined as follows: The FTC is directed to determine the annual state average of administrative costs based on the annual administrative expenses of all the expressway authorities of this state. Administrative expenses include, but are not limited to:

- Employee salaries and benefits;
- Small business outreach;
- Insurance;
- Professional service contracts not directly related to the operation and maintenance of the expressway system; and
- Other overhead costs.

The FTC is authorized to adopt rules necessary to implement these provisions.

The bill requires a distance of at least five miles between main through-lane tolling points on MDX transportation facilities constructed after July 1, 2017, exclusive of entry and exit ramps.

The bill limits the MDX's authority to increase tolls and, therefore, decreases its ability to raise revenues. According to the MDX, this revision impacts the MDX's ability to issue future bonds and eliminates the MDX's ability to set tolls as may be operationally needed.[13] The bill also limits the MDX's use of its toll revenues for administrative expenses to not more than ten percent above the annual state average of administrative costs, as determined by the FTC. No other expressway authority is subject to similar statutory restrictions on administrative expenses.

The bill creates a new subsection (6) of s. 348.0004, F.S. Subject to compliance with bond covenants, the MDX is required, at the time that any toll is incurred, to reduce the toll charged on any of the MDX's toll facilities by at least five percent, but not more than ten percent, for each SunPass registrant having an account in good standing and having the license plate of the vehicle or vehicles incurring the toll registered to the SunPass account at the time the toll is incurred.

[13] The MDX email to committee staff April 18, 2017. (On file in the Senate Transportation Committee.)

The bill prohibits the MDX from imposing additional requirements for receipt of the reduced toll amount.

This revision would reduce the amount of the MDX's toll revenues. The amount of the reduction is dependent on the percentage of the toll reduction granted and on the number of eligible trips on the MDX's facilities.

The bill creates a new subsection (11) of s. 348.0004, F.S. The MDX is directed to determine its surplus revenues as defined in s. 348.0002(12), F.S.[14]. The MDX must then dedicate at least 20 percent, but not greater than 50 percent, of the annual surplus revenues to transportation- and transit-related expenses for projects in the area served by the MDX. The MPO for Miami-Dade County is directed to annually select and list a project or projects within the county to be funded by the MDX's dedicated surplus revenues, with the MDX selecting from the list those transportation- and transit-related expenses that have a rational nexus, as defined, to the MDX's transportation facilities. .

A rational nexus is established by demonstrating that the proposed transportation expenditure makes a substantial impact on the capacity or use of the MDX's transportation facilities, or that the proposed transit expenditure complements the operation of, or expands the access to, the MDX's transportation facilities.

Funded transportation- and transit-related expenses may include, but are not limited to:

- Expenses associated with the planning, design, acquisition, construction, extension, rehabilitation, equipping, preservation, maintenance, or improvement of public transportation facilities, transit facilities, intermodal facilities, or multimodal corridors owned or operated by such municipality or county; and
- Transit-related expenses that impact the capacity or use of the MDX's transportation facilities.

This revision will reduce the amount of surplus revenues available to the MDX for use on the MDX's facilities, to the extent that a portion of the surplus revenues is used to fund transportation- or transit-related expenses for a project or projects selected by the MPO. The MPO will incur administrative expenses in developing the required annual list reflecting the MPO's selected project or projects to be funded by the MDX's dedicated surplus revenues.

The bill creates a new subsection (12) of s. 348.0004, F.S. The new provision requires Miami-Dade County to have a financial audit[15] of the revenues and expenditures of the county's

[14] That section defines "surplus revenues" to mean revenues in any county as defined in s. 125.011(1) derived from rates, fees, rentals, tolls, and other charges for the services and facilities of an expressway system as may exist at the end of a fiscal year after payment of all annually required operating and maintenance expenses for the fiscal year and all debt service payable in the fiscal year on bonds issued or other debts incurred for any purpose in connection with an expressway system, including debt incurred to finance the construction, extension, repair, or maintenance of an expressway system.

[15] The MDX advises it is currently subject to an annual external audit conducted by a certified public accounting firm that is posted on the MDX website and filed with the auditor general, the Securities Exchange Commission, the bondholders trustee, and the Florida Transportation Commission. The MDX email to committee staff April 18, 2017. (On file in the Senate Transportation Committee.) As the MDX is a special district, it appears it is subject to the annual financial audit report requirements of s. 218.39, F.S.

transportation plan conducted by an independent third party not less than biennially, and the audit report must be posted on the county's website.

The section requires the MDX to have a financial audit conducted by an independent third party not less than biennially and to post the audit reports on its website.

Section 5

High-Occupancy Toll Lanes and Express Lanes (Sections 1 and 2)

Present Situation:

A high-occupancy-vehicle (HOV) lane is a lane of a public roadway designated for use by vehicles in which there is more than one occupant.[16] A high-occupancy toll lane is an HOV lane, the use of which requires payment of a toll. Tolled HOV lanes are referred to as high-occupancy toll lanes, or HOT lanes.[17]

Current law does not define the terms "HOT lane" or "express lane." However, the FDOT's Topic No. 525-030-020-a, *Tolling for New and Existing Facilities on the State Highway System,*[18] provides the following definitions:

- "Managed Lanes" - Highway facilities or sets of lanes within a highway facility where operational strategies are proactively implemented and managed in response to changing conditions with a combination of tools. These tools may include accessibility, vehicle eligibility, pricing, or a combination thereof. Types of managed lanes include high occupancy vehicle (HOV) lanes, high occupancy toll (HOT) lanes, truck only lanes, truck only toll lanes, bus rapid transit lanes, reversible lanes, and express lanes.
- "Express Lanes" - A type of managed lane where dynamic pricing through electronic tolling is applied to lanes with through traffic, having fewer access points. Express lanes can co-locate within an existing non tolled facility to manage congestion and provide a more reliable trip time.

Section 338.166, F.S., authorizes the FDOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on HOT lanes or express lanes established on FDOT-owned facilities. The FDOT is authorized to continue to collect the tolls on HOT lanes or express lanes after any bond debt is discharged. Such tolls must first be used to pay the annual cost of operation, maintenance, and improvement of the HOT lanes or express lanes project or associated transportation system. Section 338.166(4), F.S., authorizes variable rate tolling.

The FDOT must use any remaining toll revenue from HOT lanes or express lanes for the construction, maintenance, or improvement of any road on the State Highway System within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.

[16] Section 316.0741(1)(a), F.S.
[17] Except that vehicles in HOT lanes must have three or more occupants. *See* the FDOT's SB 250 (2012) Agency Bill Analysis at 2. (On file in the Senate Transportation Committee.)
[18] On file in the Senate Transportation Committee. The directive expressly does not apply to Florida Turnpike facilities.

Section 338.166, F.S.,[19] expressly does not apply to the Turnpike System.[20] However, s. 338.2216(1)(d), F.S., directs the FTE to pursue and implement new technologies and processes in its operations and collection of tolls and other amounts associated with road infrastructure usage. Such technologies and processes must include variable pricing. [21]

Express Lane Management

A number of express lane projects in Florida are either in operation, under construction, or proposed.[22] These projects have or are planned to have express lanes with adjacent general use lanes (with no tolls) and, on the turnpike system, express lanes adjacent to general toll lanes (lanes that generally have fixed tolls). The FDOT describes its management of express lanes as follows:

> The express lanes are managed using a combination of eligibility, access, and pricing. Only two axle vehicles are eligible with buses eligible regardless of number of axles. This reduces the number of vehicles that can choose to use the express lanes. The access (entry and exit points on the express lanes) is limited to certain locations, providing a choice for users making longer distance trips to the major origin and destination patterns in the area. Trips that are shorter and more local must use the general use lanes. As the volume in the express lanes increases, the price to use the express lanes increases. The toll amount posted on the sign is dynamically priced based on the congestion in the express lanes with a goal of providing a free flow condition [in the express lanes].
>
> The traffic density, which is a combination of speed and volume, is used to determine the toll amount needed to optimize traffic flow in the express lanes. Volume and speed data is collected from roadside detectors and used to calculate the traffic density by dividing the volume in the express lanes by the speed in the express lanes. The toll amount is not related to the amount of congestion, speed, or performance of the general use lanes. Where there is no congestion in the express lanes, regardless of the performance or amount of congestion in the general use lanes, the minimum toll amount in the express lanes is $0.50.[23]

The FDOT's general goal is that a driver in an express lane should be able to maintain an average speed of 45 miles per hour or greater while in the lane.[24]

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[19] Section 338.166(6), F.S.

[20] Section 338.2216(1)(a), F.S., grants to the FTE, in addition to the powers granted to the FDOT, full authority to exercise all powers granted to the FTE under chapter 338, F.S. Section 338.2216(4), F.S., provides the powers conferred upon the FTE under the Florida Turnpike Enterprise Law (ss. 338.22 – 338.241) are in addition and supplemental to the existing powers of the FDOT and the FTE.

[21] The FTE is not currently operating any express lanes. *See* the FDOT's SB 1570 (2012) Agency Bill Analysis, at 8. (On file in the Senate Transportation Committee.)

[22] *See* the project map with links to express lane project information available on the FDOT's website at: http://www.floridaexpresslanes.com/projects/project-map/. (Last visited March 19, 2017.)

[23] *Supra* note 6 at 2.

[24] The FDOT email to committee staff April 18, 2017. (On file in the Senate Transportation Committee.)

Toll Collection Interoperability

Interoperable toll collection allows drivers to establish a single toll account that allows for payments on a variety of tolled facilities, regardless of the facility's ownership. An interoperable system recognizes a customer at any given toll collection facility participating in the system, and each toll facility owner or operator receives proper payment for use of the owner's or operator's facility.

The 2012 Moving Ahead for Progress in the 21st Century Act, MAP-21,[25] requires all toll facilities on Federal-aid highways to implement technologies or business practices that provide for the interoperability of electronic toll collection programs no later than four years after its enactment. Current Florida law requires all new limited access facilities and existing transportation facilities on which new or replacement electronic toll collection systems are installed to be interoperable with the FDOT's electronic toll-collection system.[26]

Level of Service

The Transportation Research Board (Board) is a division of the National Research Council, "which serves as an independent adviser to the federal government and others on scientific and technical questions of national importance, and which is jointly administered by the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine." The Board's mission "is to provide leadership in transportation innovation and progress through research and information exchange, conducted within a setting that is objective, interdisciplinary, and multimodal." [27]

The Board's 2010 Highway Capacity Manual (Manual), along with multiple other items, addresses level of service criteria for basic highway segments. Generally, level of service is a measure of traffic conditions "using a quantitative stratification of a performance measure or measures."[28] According to the Manual, , "A basic freeway segment can be characterized by three performance measures: density in passenger cars per mile per lane, space mean speed in miles per hour, and the ratio of demand flow rate to capacity." The Manual indicates that each measure "is an indication of how well traffic is being accommodated by the basic freeway segment."[29]

A letter grade is assigned to a given highway segment level of service, ranging from best performance at level A to worst performance at level F. The Manual describes the levels as follows:

- Level A: Free-flow operations. Free-flow speed (FFS) prevails on the freeway, and vehicles are almost completely unimpeded in their ability to maneuver within the traffic stream.
- Level B: Reasonably free-flow operations. FFS is maintained. The ability to maneuver is only slightly restricted.

[25] Section 1512(b), P.L. 112-141.
[26] Section 338.01(7), F.S.
[27] *See* the National Academy website available at: http://www.trb.org/GetInvolvedwithTRB/GetInvolvedwithTRB.aspx. (Last visited April 19, 2017.)
[28] *See* the Federal Highway Administration's website, at 3.3.3, available at: https://safety.fhwa.dot.gov/road_diets/info_guide/ch3.cfm. (Last visited April 19, 2017.)
[29] *Highway Capacity Manual 2010,* at 11-7. (Copy on file in the Senate Transportation Committee.)

- Level C: FFSs near the FFS of the freeway. Freedom to Maneuver is noticeably restricted.
- Level D: Speeds begin to decline with increasing flows, with density increasing more quickly. Freedom to maneuver is seriously limited.
- Level E: Operation at capacity. Operations on the freeway are highly volatile because there are virtually no usable gaps within the traffic stream, leaving little room to maneuver within the traffic.
- Level F: Breakdown, or unstable flow.[30]

Effect of Proposed Changes:

Section 1 amends s. 338.166(4), F.S., to authorize the FDOT to require use of an electronic transponder that is interoperable with the FDOT's electronic toll collection system for the use of HOT lanes or express lanes. Should the FDOT impose the requirement, all users of the FDOT's HOT lanes or express lanes must have the specified transponder to use the FDOT's HOT lanes or express lanes.[31]

The bill also creates a new subsection (5) of s. 338.166, F.S. Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the minimum express lane toll. The bill defines a customer's express lane average travel speed as the customer's average travel speed from the customer's entry point to the customer's exit point. This revision will reduce the FDOT's toll collection revenues, dependent on the number of trips and the number of times a customer's average travel speed falls below 40 miles per hour.

Section 2 amends s. 338.2216(1)(d), F.S., to authorize the FTE to require use of an electronic transponder that is interoperable with the FDOT's electronic toll collection system for the use of express lanes on the turnpike system. Should the FTE impose the requirement, all users of express lanes on the turnpike system must have the specified transponder to use the express lanes.[32]

The bill prohibits variable pricing in express lanes on the turnpike system when the level of service in the express lane, determined in accordance with the Transportation Research Board Highway Capacity Manual (5th Edition, HCM 2010), as amended, is equal to level of service A. When the level of service in the express lane is level of service B, variable pricing in the express lane may only be implemented by charging the general toll lane toll amount, plus an amount set by FDOT rule. Pricing in express lanes when the level of service is other than level of service A or service B may vary in the manner established by the FTE to manage congestion in the express lanes, with an exception: Effective July 1, 2018, if a customer's average travel speed for a trip in an express lane falls below 40 miles per hour, the customer must be charged the general toll lane toll amount, plus an amount set by FDOT rule. A customer's express lane average travel speed is

[30] *Id.*
[31] SunPass registrants may already use HOT lanes and express lanes. The FDOT announced in 2014 that Florida's SunPass, Georgia's Peach Pass, and North Carolina's Quick Pass are interoperable and valid in all three states. *See* the FDOT's November 2014 News Release available at: https://www.sunpass.com/pdf/FLGANCValid.pdf. (Last visited April 19. 2017.) Should the requirement be imposed, holders of the associated transponders would appear to be able to use HOT lanes or express lanes. If a user wishing to use HOT lanes or express lanes holds no pass from an interoperable state, it appears that user would have to register and create a SunPass account in order to receive a transponder.
[32] *Id.*

also defined as the customer's average travel speed from the customer's entry point to the customer's exit point.

This revision will reduce the FTE's, and therefore the FDOT's, toll collection revenues, dependent on the number of trips, the frequency of the existence of level of Service A or B in the express lanes on the turnpike system, and the number of times a customer's average travel speed falls below 40 miles per hour.

Turnpike Toll Revenues/Miami-Dade, Broward, and Palm Beach Counties (Section 3)

Present Situation:

Section 338.231, F.S., directs the FDOT at all times to fix, adjust, charge, and collect such tolls and amounts for the use of the turnpike system as are required in order to provide a fund sufficient with other revenues of the turnpike system to pay the cost of maintaining, improving, repairing, and operating such turnpike system; to pay the principal of and interest on all bonds issued to finance or refinance any portion of the turnpike system; and to create reserves for these purposes.

In 1997, the Legislature enacted legislation[33] currently located in s. 338.231(3)(a), F.S. For the period July 1, 1998, through June 30, 2017, the FDOT is required, to the maximum extent feasible, to program sufficient funds in the tentative work program such that the percentage of turnpike toll and bond financed commitments in Miami-Dade County, Broward County, and Palm Beach County, compared to total turnpike toll and bond financed commitments, is at least 90 percent of the share of net toll collections attributable to users of the turnpike system in those counties, as compared to total net toll collections attributable to users of the turnpike system.[34]

Effect of Proposed Changes:

Section 3 amends s. 338.231(3)(a), F.S., currently set to expire on June 30 of this year, by extending the expiration date to June 30, 2027. The FDOT advises this revision requires no change in its current programming practice.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[33] Chapter 97-280, L.O.F.

[34] This provision expressly does not apply when its application would violate any bond covenant relating to the issuance of turnpike bonds.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Users of the MDX's facilities may see a reduction in the frequency and amount of toll increases. Eligible SunPass users of the MDX's toll facilities would benefit from a reduction in toll charges of at least 5 percent, but not more than 10 percent. The amount of this reduction is dependent on the number of eligible trips on MDX toll facilities, and is therefore unknown.

Users of facilities in Miami-Dade County may benefit from municipal or county transportation- or transit-related expenses funded by a portion of the MDX's surplus revenues. The MDX system may benefit from the same funded expenses. The amount, however, is indeterminate, as the funds available for such expenses are indeterminate.

Users of the FDOT's express lanes, and users of the FTE's express lanes, may experience reduced tolls. The amount of this reduction with respect to the FDOT's express lanes is dependent on the number of trips and the number of times a customer's average travel speed falls below 40 miles per hour, and is therefore unknown. The amount of this reduction with respect to express lanes on the turnpike system is dependent on the number of trips, the frequency of the existence of level of service A or B in the express lanes, and the number of times a customer's average travel speed falls below 40 miles per hour; and is therefore unknown.

C. Government Sector Impact:

The MDX is an independent agency of the state. The bill will potentially make it more difficult for the MDX to increase its tolls, making it more difficult to increase its revenues. According to the MDX, the bill limits its ability to set toll rates, which may make its bonds less favorable in the financial markets.[35] If the MDX chooses to grant up to a 10 percent reduction in toll charges for eligible SunPass users of the MDX's toll facilities, the MDX may experience reduced toll collections in an indeterminate amount.

The bill also limits the MDX's administrative expenses to ten percent above the annual state average of administrative costs, as determined by the FTC. The impact of this revision to the MDX is unknown. Also unknown is whether the MDX will be required to undertake infrastructure design revisions or to incur other related costs to comply with

[35] *See* the MDX email to House Transportation & Infrastructure Committee Staff, March 10, 2017. (On file in the Senate Transportation Committee.)

the requirements that there be a distance of five miles between main through-lane tolling points constructed after July 1, 2017.

The FTC will incur administrative expenses associated with determining the annual state average of administrative costs and with any rulemaking.

The bill will reduce the amount of surplus revenues available to the MDX for use on the MDX's facilities, to the extent that a portion of the surplus revenues is used to fund transportation- or transit-related expenses in proposals submitted by municipalities and counties. The amount, however, is indeterminate, as it is dependent on the percentage of the surplus revenues dedicated to the specified expenses.

The MDX may incur expenses associated with the required traffic and revenue studies, with the required periodic audits, and withplacing the audits on its website. Miami-Dade County may incur expenses associated with the required periodic audits and placing the audits on its website.

The bill may reduce FDOT revenues. The FDOT will be required to charge the minimum express lane toll, and not any variably priced toll, if the customer's average travel speed for a trip in an express lane falls below 40 miles per hour. Effective July 1, 2018, the bill may reduce the FTE's and, therefore, the FDOT's revenues, when the level of service in an express lane on the turnpike system is at level A or B. In the former case, variable pricing may not be implemented in express lanes on the turnpike system. When the level of service is level B, variable pricing may only be implemented by charging the general toll lane toll amount, plus an amount set by rule by the FDOT, for use of an express lane on the turnpike system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 338.166, 338.2216, 338.231, and 348.0004.

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 25, 2017:
The committee substitute makes the following revisions:

- Authorizes the FDOT and the FTE to require use of an electronic transponder interoperable with the FDOT's electronic toll collection system for the use of its HOT lanes or express lanes.
- Provides that effective July 1, 2018, if a customer's average travel speed for a trip in an express lane on the turnpike system falls below 40 miles per hour, the toll to be charged is the general toll lane toll amount plus *an amount set by FDOT rule*, rather than plus 25 cents.
- Requires MDX transportation facilities constructed after July 1, 2017, maintain a distance of at least five miles between main through-lane tolling points is required, excluding entry and exit ramps.
- Authorizes the MDX to reduce toll charges for certain SunPass registrants, the required reduction is at least five percent, but not more than ten percent.
- Requires the MDX to determine its surplus revenues, calculated as specified, and dedicate at least twenty percent, but not more than fifty percent, of the remaining surplus revenues to transportation- and transit-related expenses for projects in municipalities and counties in which the MDX operates under specified conditions.
- Directs the Miami-Dade County MPO to annually select a project or projects within the county to be funded by the dedicated surplus revenues and to submit a list reflecting the project or projects, with the MDX selecting from the list for funding transportation- and transit-related expenses that have a rational nexus to the MDX's transportation facilities.
- Requires Miami-Dade County to have a financial audit of the revenues and expenditures of the county's transportation plan conducted by an independent third party not less than biennially and to post the audit reports on its website in order to be eligible to receive the MDX's dedicated surplus revenues.

CS by Transportation on March 22, 2017:
The CS makes the following changes to the bill:

- Clarifies that the distance of five miles is required between main through-lane tolling points, excluding entry and exit ramps;
- Requires the MDX to reduce the toll charged on any of its toll facilities by 25 percent for SunPass registrants in good standing; and
- Prohibits the MDX from imposing additional requirements for receipt of the reduced toll amount.

B. Amendments:

None.

By the Committee on Transportation; and Senator Garcia

596-02748-17 20171562c1

A bill to be entitled

An act relating to expressway authorities; providing a short title; amending s. 348.0004, F.S.; providing applicability; requiring toll increases by authorities in certain counties to be justified by an independent study by a third party; providing that such authorities may only increase tolls to the extent necessary to adjust for inflation pursuant to a certain procedure for toll rate adjustments; requiring toll increases to be approved by a vote of the expressway authority boards; limiting the amount of toll revenues such authorities may use for administrative expenses; requiring a certain minimum distance between main through-lane tolling points on transportation facilities constructed after a specified date, subject to a certain restriction; providing applicability; conforming a cross-reference; requiring authorities in certain counties to reduce toll charges by a specified amount at the time that any toll is incurred for certain SunPass registrants; prohibiting authorities in certain counties from imposing additional requirements for receipt of the reduced toll amount; creating s. 348.00115, F.S.; requiring authorities in certain counties to post certain information on a website; defining the term "contract"; providing an effective date.

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

596-02748-17 20171562c1

Section 1. This act may be cited as the "Toll Reform Act."

Section 2. Present subsections (6) through (9) of section 348.0004, Florida Statutes, are redesignated as subsections (7) through (10), respectively, paragraph (e) of subsection (2) of that section is amended, and a new subsection (6) is added to that section, to read:

348.0004 Purposes and powers.—

(2) Each authority may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its purposes, including, but not limited to, the following rights and powers:

(e) To fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system, which tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act. However, such right and power may be assigned or delegated by the authority to the department.

1. Notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any indebtedness outstanding on July 1, 2017, in any county as defined in s. 125.011(1):

a. The authority may not increase a toll unless the increase is justified to the satisfaction of the authority by a traffic and revenue study conducted by an independent third party.

b. The authority may only increase tolls to the extent necessary to adjust for inflation pursuant to the procedure for toll rate adjustments provided in s. 338.165.

c. A toll increase must be approved by a two-thirds vote of the expressway authority board.

d. The authority may not use more than 10 percent of its toll revenues for administrative expenses. For purposes of this sub-subparagraph, administrative expenses include, but are not limited to, employee salaries and benefits, small business outreach, insurance, professional service contracts not directly related to the operation and maintenance of the expressway system, and other overhead costs.

e. On transportation facilities constructed after July 1, 2017, there must be a distance of at least 5 miles between main through-lane tolling points. The distance requirement of this sub-subparagraph does not apply to entry and exit ramps. The authority may not increase a toll on an individual toll facility to implement this sub-subparagraph.

2. Notwithstanding s. 338.165 or any other provision of law to the contrary, in any county as defined in s. 125.011(1), to the extent surplus revenues exist, they may be used for purposes enumerated in subsection (8) ~~(7)~~, provided the expenditures are consistent with the metropolitan planning organization's adopted long-range plan.

3. Notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any outstanding indebtedness payable from tolls, in any county as defined in s. 125.011(1), the board of county commissioners may, by ordinance adopted on or before September 30, 1999, alter or abolish existing tolls and currently approved increases thereto if the board provides a local source of funding to the county expressway system for

transportation in an amount sufficient to replace revenues necessary to meet bond obligations secured by such tolls and increases.

(6) An authority in any county as defined in s. 125.011(1) shall, at the time that any toll is incurred, reduce the toll charged on any of the authority's toll facilities by 25 percent for each SunPass registrant having an account in good standing and having the license plate of the vehicle or vehicles incurring the toll registered to the SunPass account at the time the toll is incurred. The authority may not impose additional requirements for receipt of the reduced toll amount.

Section 3. Section 348.00115, Florida Statutes, is created to read:

348.00115 Public accountability.—An expressway authority in a county as defined in s. 125.011(1) shall post the following information on its website:

(1) Audited financial statements and any interim financial reports.

(2) Board and committee meeting agendas, meeting packets, and minutes.

(3) Bond covenants for any outstanding bond issues.

(4) Authority budgets.

(5) Authority contracts. For purposes of this subsection, "contract" means a written agreement or purchase order issued for the purchase of goods or services or a written agreement for the receipt of state or federal financial assistance.

(6) Authority expenditure data, which must include the name of the payee, the date of the expenditure, and the amount of the expenditure. Such data must be searchable by name of the payee,

name of the paying agency, and fiscal year and must be downloadable in a format that allows offline analysis.

(7) Information relating to current, recently completed, and future projects on authority facilities.

Section 4. This act shall take effect July 1, 2017.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	SB 1564
INTRODUCER:	Senator Garcia
SUBJECT:	Domestic Violence
DATE:	April 24, 2017
REVISED:	4/20/17

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	**Favorable**
2.	McAuliffe	Sadberry	ACJ	**Recommend: Favorable**
3.	McAuliffe	Hansen	AP	**Favorable**

I. Summary:

SB 1564 amends section 741.283, Florida Statutes, to increase the penalties for both first-time and subsequent domestic violence offenders who intentionally cause bodily harm to another person and are adjudicated guilty. The bill also enhances the penalties if the domestic violence offense took place in front of a child, under 16 years of age, who is a family or household member of the victim or the perpetrator.

Section 775.08435, F.S., is amended to add an additional circumstance in which a court is prohibited from withholding the adjudication of a defendant. The bill prohibits a court from withholding adjudication for a third degree felony that is a crime of domestic violence unless certain conditions are met.

The bill creates section 741.30(1)(g), Florida Statutes, to prohibit attorney's fees from being awarded in any injunction proceeding for protection against domestic violence.

Under this bill, counties may incur additional costs associated with the minimum sentences for certain offenders. See Section V. Fiscal Impact Statement

The bill is effective October 1, 2017.

II. Present Situation:

Domestic violence affects thousands of individuals and families in Florida. In 2015, there were 107,666 domestic violence offenses reported to law enforcement.[1]

[1] Florida Department of Law Enforcement, *Domestic Violence*, available at http://www.fdle.state.fl.us/cms/FSAC/Crime-Trends/Domestic-Violence.aspx (last visited March 29, 2017).

Section 741.28(2), F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. A family or household member includes:

- Spouses;
- Former spouses;
- Persons related by blood or marriage;
- Persons who are presently residing together as if a family or who have resided together in the past as if a family in the same single family dwelling unit; and
- Persons who are parents of a child in common, regardless of whether they have been married.[2]

Criminal Penalties for Domestic Violence Offenses

Florida law requires certain mandatory penalties related to domestic violence offenses. Section 741.281, F.S., requires a court to sentence any person convicted[3] of a domestic violence crime to a minimum term of one year probation with the condition that the person attend a batterer's intervention program.[4]

Section 741.325, F.S., requires batterer's intervention programs be based on a psychoeducational model that addresses tactics of power and control by one person over another. A batterer's intervention program must be at least 29 weeks in length and include 24 weekly sessions, and include appropriate intake, assessment, and orientation programming.[5]

In addition to the mandatory probation and the batterer's intervention program, certain domestic violence offenses require a defendant serve jail time. If a person is adjudicated guilty of a domestic violence offense and intentionally caused bodily harm to another person, a court must sentence the person to a minimum of five days in the county jail.[6]

Withholding Adjudication of Guilt

Section 775.08435, F.S., prohibits a court from withholding adjudication of guilt in certain felony cases. A court may not withhold adjudication of guilt for a defendant on:

- A capital, life, or first degree felony[7] offense.

[2] The family or household members must be currently residing or have in the past resided together in the same single dwelling unit; this excludes persons who have a child in common. Section 741.28(3), F.S.
[3] This provision applies to any person found guilty of, having an adjudication withheld on, or pleading nolo contendere to a crime of domestic violence. Section 741.281, F.S.
[4] Section 741.281, F.S., allows a court to use its discretion to impose a batterer's intervention program if the court states on the record to why such a program would be inappropriate. The court must also impose a batterer's intervention program as a condition of probation unless the court determines that the person does not qualify for such a program.
[5] Section 741.325(1), F.S.
[6] The court is not required to order five days in the county jail when the court orders an offender to a period of incarceration in a state correction facility. Section 741.283, F.S.
[7] A first degree felony is punishable by up to 30 years imprisonment and up to a $10,000 fine. Sections 775.082 and 775.083, F.S.

- A second degree felony[8] offense unless:
  - The state attorney makes a written request to withhold adjudication; or
  - The court makes written findings that a withhold of adjudication is reasonably justified based on the circumstances or mitigating factors in s. 921.0026, F.S.[9]
- A third degree felony[10] offense if the defendant has a prior withholding of adjudication for a felony offense that did not arise from the same criminal episode as the current felony offense unless:
  - The state attorney requests in writing that adjudication be withheld; or
  - The court makes written findings that a withholding of adjudication is reasonably justified based on the circumstances or mitigating factors in s. 921.0026, F.S.[11]

A court may not withhold adjudication when a defendant has committed a second degree felony and has a prior withhold of adjudication from a different offense, or when the defendant committed a third degree felony and has two or more prior withholdings of adjudication from a different offense.[12]

Domestic Violence Injunctions

Section 741.30, F.S., provides a cause of action for an injunction for protection against domestic violence. Any person who is a family or household member and who either is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of any act of domestic violence, may petition for an injunction for the protection against domestic violence.[13]

After reviewing the petition, if a court finds there is an immediate and present danger of domestic violence, the court may grant a temporary injunction, pending a full hearing.[14] Following a hearing, if the court determines the petitioner is the victim of domestic violence or is in imminent danger of becoming a victim of domestic violence, the court may enter an injunction.[15]

Attorney's fees for Domestic Violence Injunction Hearings

Section 741.30, F.S., does not address the award of attorney's fees related to domestic violence injunction hearings. Florida courts are in conflict regarding whether s. 57.105, F.S., allows a court to order attorney fees incurred in domestic violence injunction proceedings.[16] The Third

[8] A second degree felony is punishable by up to 15 years imprisonment and up to a $10,000 fine. Sections 775.082 and 775.083, F.S.
[9] Section 921.0026, F.S., provides 14 statutory mitigating circumstances a court may consider when sentencing a defendant for a felony offense.
[10] A third degree felony is punishable by up to five years imprisonment and up to a $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.
[11] Section 775.08435(1), F.S.
[12] Section 775.08435(1), F.S.
[13] Section 741.30(1), F.S.
[14] Section 741.30(5)(a), F.S.
[15] Section 741.30(6), F.S.
[16] Section 57.105, F.S., authorizes a court to award reasonable attorney's fees when the court finds the losing party or the losing party's attorney should have known that a claim or defense presented to the court or at trial was either: 1) not

District Court of Appeal held there is no statutory authority to award attorney's fees as sanctions in a domestic violence injunction case.[17] Whereas, the First District Court of Appeal held that there is no statutory prohibition against an award of attorney's fees pursuant s. 57.105, F.S., for domestic violence injunction hearings.[18]

III. Effect of Proposed Changes:

Criminal Penalties for Domestic Violence Offenses

Section 1 amends s. 741.281, F.S., to require a court to order the defendant to both attend ***and complete*** a batterer's intervention program as a condition of probation. A failure to complete a batterer's intervention program may result in a violation of probation.

Section 2 also amends s. 741.283, F.S., to increase the penalties for both first-time and subsequent domestic violence offenders who intentionally cause bodily harm to another person and are adjudicated guilty. The section requires a court to order a defendant to serve the following time in a county jail:

- 10 days for a first offense;
- 15 days for a second offense; and
- 20 days for a third or subsequent offense.

The penalties are further enhanced if the domestic violence offense took place in front of a child, under 16 years of age, who is a family or household member of the victim or the perpetrator. The bill requires a court to order a defendant to serve the following time in a county jail:

- 15 days for a first offense;
- 20 days for a second offense; and
- 30 days for a third or subsequent offense.[19]

Withholding Adjudication of Guilt

Section 4 amends s. 775.08435, F.S., to limit the authority of a court withholding the adjudication of a defendant. A court may not withhold adjudication for a third degree felony that is a crime of domestic violence unless:

- The state attorney makes a written request for the adjudication to be withheld; or
- The court makes written findings that the withholding of adjudication is reasonably justified based on the circumstances or mitigating factors in s. 921.0026, F.S.

supported by the material facts necessary to establish the claim or defense; or 2) would not be supported by the application of then-existing law to those material facts.

[17] *Ratigan v. Stone*, 947 So. 2d 607, 608 (Fla. 3d DCA 2007).

[18] *Hall v. Lopez*, 2016 41 Fla. L. Weekly D 1763 (Fla. 1st DCA 2016).

[19] The mandatory jail time does not apply if the court sentences a defendant to a nonsuspended period of incarceration in a state correctional facility.

Domestic Violence Injunctions

Attorney's fees for Domestic Violence Injunction Hearings

Section 3 amends s. 741.30, F.S., to prohibit attorney's fees from being awarded in any injunction proceeding for protection against domestic violence.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Under this bill, counties may incur additional costs associated with the minimum sentences for certain offenders. The Criminal Justice Impact Conference found that the bill will have no state prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 741.281, 741.283, 741.30, and 775.08435.

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 Garcia

36-01426A-17 20171564__

A bill to be entitled

An act relating to domestic violence; amending s. 741.281, F.S.; specifying that a person must complete a batterers' intervention program ordered as a condition of probation in certain circumstances; amending s. 741.283, F.S.; increasing the minimum terms of imprisonment for domestic violence; providing enhanced minimum terms in certain circumstances; amending s. 741.30, F.S.; prohibiting the award of attorney fees in specified domestic violence proceedings; amending s. 775.08435, F.S.; prohibiting the withholding of adjudication for specified domestic violence offenses; providing exceptions; providing an effective date.

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

Section 1. Section 741.281, Florida Statutes, is amended to read:

741.281 Court to order batterers' intervention program attendance.—If a person is found guilty of, has adjudication withheld on, or pleads nolo contendere to a crime of domestic violence, as defined in s. 741.28, that person shall be ordered by the court to a minimum term of 1 year's probation and the court shall order that the defendant attend and complete a batterers' intervention program as a condition of probation. The court must impose the condition of the batterers' intervention program for a defendant under this section, but the court, in its discretion, may determine not to impose the condition if it

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states on the record why a batterers' intervention program might be inappropriate. The court must impose the condition of the batterers' intervention program for a defendant placed on probation unless the court determines that the person does not qualify for the batterers' intervention program pursuant to s. 741.325. The imposition of probation under this section does not preclude the court from imposing any sentence of imprisonment authorized by s. 775.082.

Section 2. Section 741.283, Florida Statutes, is amended to read:

741.283 Minimum term of imprisonment for domestic violence.—

(1)(a) Except as provided in paragraph (b), if a person is adjudicated guilty of a crime of domestic violence, as defined in s. 741.28, and the person has intentionally caused bodily harm to another person, the court shall order the person to serve a minimum of 10 ~~5~~ days in the county jail for a first offense, 15 days for a second offense, and 20 days for a third or subsequent offense as part of the sentence imposed, unless the court sentences the person to a nonsuspended period of incarceration in a state correctional facility.

(b) If a person is adjudicated guilty of a crime of domestic violence, as defined in s. 741.28, and the person has intentionally caused bodily harm to another person, and the crime of domestic violence takes place in the presence of a child under 16 years of age who is a family or household member, as defined in s. 741.28, of the victim or the perpetrator, the court shall order the person to serve a minimum of 15 days in the county jail for a first offense, 20 days for a second

offense, and 30 days for a third or subsequent offense as part of the sentence imposed, unless the court sentences the person to a nonsuspended period of incarceration in a state correctional facility.

(2) This section does not preclude the court from sentencing the person to probation, community control, or an additional period of incarceration.

Section 3. Paragraphs (g), (h), (i), and (j) of subsection (1) of section 741.30, Florida Statutes, are redesignated as paragraphs (h), (i), (j), and (k), respectively, and a new paragraph (g) is added to that subsection, to read:

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

(1) There is created a cause of action for an injunction for protection against domestic violence.

(g) Notwithstanding any other law, attorney fees may not be awarded in any proceeding under this section.

Section 4. Paragraph (c) of subsection (1) of section 775.08435, Florida Statutes, is redesignated as paragraph (d), and a new paragraph (c) is added to that subsection, to read:

775.08435 Prohibition on withholding adjudication in felony cases.—

(1) Notwithstanding the provisions of s. 948.01, the court may not withhold adjudication of guilt upon the defendant for:

(c) A third degree felony that is a crime of domestic violence, as defined in s. 741.28, unless:

1. The state attorney requests in writing that adjudication

be withheld; or

2. The court makes written findings that the withholding of adjudication is reasonably justified based on circumstances or factors in accordance with s. 921.0026.

Section 5. 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 1468
INTRODUCER:	Education Committee and Senator Galvano
SUBJECT:	Education
DATE:	April 26, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bouck	Graf	ED	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Favorable**
3.	Sikes	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1468 codifies responsibilities for the Auditor General, extends the date by which Florida Polytechnic University must meet statutory criteria, expands the authority of the Commissioner of Education, and establishes the Early Childhood Music Education Incentive Pilot Program. Specifically, the bill:

- Codifies the requirement for the Auditor General to conduct financial audits of accounts and records of the Florida School for the Deaf and the Blind.
- Codifies the December 31, 2017, deadline by which the Florida Polytechnic University must meet the criteria established in law relating to accreditation; development of science, technology, engineering, and mathematics programs; and operational framework.
- Authorizes the Commissioner of Education to coordinate, in the event of an emergency, with school districts, Florida College System institutions, and the satellite offices of the Division of Vocational Rehabilitation and the Division of Blind Services to assess their needs for resources to enable such entities to reopen as soon as possible after considering the health, safety, and welfare of students and clients.
- Establishes the Early Childhood Music Education Incentive Pilot Program in the Department of Education for a period of three school years to assist selected school districts in implementing comprehensive music education programs for students in kindergarten through grade 2.

The bill also expands educational options and services to prepare students for higher education and entry into the workforce. Specifically, the bill:

- Repeals the eligibility criteria for students to participate in virtual instruction programs.
- Removes the requirement that student enrollment in a virtual instruction program be limited to a program provided by a school district or virtual charter school operated by the district in which the student resides.
- Deems participants in on-the-job training activities administered by the Division of Blind Services (DBS) and the Division of Vocational Rehabilitation (VR) as employees of the state for purposes of workers' compensation coverage.

The bill has an indeterminate fiscal impact on state expenditures. The estimated fiscal impact to the Florida Education Finance Program (FEFP) to fund the expansion of student eligibility for public virtual education is expected to be absorbed within the FEFP calculation and is estimated at $4,363,075. The Division of Risk Management expects to incur additional claim costs for covering DBS and VR on-the-job training participants.

The bill takes effect on July 1, 2017.

II. Present Situation:

Auditor General

The Auditor General (AG) serves at the pleasure of the Legislature to audit records and perform related duties as prescribed by law.[1] The AG performs his or her duties independently but under the general policies established by the Legislative Auditing Committee (LAC)[2].[3] The AG is required to annually conduct financial audits[4] of:

- State government;
- All state universities and state colleges;
- The accounts and records of all district school boards in counties with populations of fewer than 150,000, and the Florida School for the Deaf and the Blind;[5] and
- Once every 3 years, the accounts and records of all district school boards in counties that have populations of 150,000 or more.[6]

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[1] Art. III, s. 2, Fla. Const. *See also* s. 11.42(2), F.S.

[2] The Legislative Auditing Committee may take under investigation any matter within the scope of an audit, review, or examination completed or being conducted by the Auditor General or the Office of Program Policy Analysis and Government Accountability, and, in connection with such investigation, may exercise the powers of subpoena by law vested in a standing committee of the Legislature. Section 11.40(1), F.S.

[3] Section 11.45(2)(k), F.S.

[4] "Financial audit" means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards as adopted by the Board of Accountancy. When applicable, the scope of financial audits shall encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law. Section 11.45(1)(c).

[5] The Florida School for the Deaf and the Blind was added by the bill implementing the 2016-2017 General Appropriations Act. Sec. 5, ch. 2016-62, L.O.F.

[6] 11.45(2)(b)-(e), F.S.

Each required financial audit, when practicable, must be completed within nine months following the end of each audited fiscal year of the state agency or political subdivision.[7]

The AG must notify the LAC of any local governmental entity, district school board, charter school, or charter technical career center that does not comply with reporting requirements relating to annual financial audits.[8]

Florida School for the Deaf and Blind

The Florida School for the Deaf and the Blind (FSDB is a state-supported residential public school for hearing-impaired and visually impaired students in preschool through 12th grade.[9] The FSDB is a component of the delivery of public education within Florida's K-20 education system and is funded through the Department of Education (DOE or department).[10]

The FSDB operates under the leadership and direction of its board of trustees (board).[11] The board adopts rules, subject to the approval of the State Board of Education (SBE), as it considers necessary to operate the FSDB in conjunction with the rules of the SBE.[12]

Board authority includes, but is not limited to:

- Provide for the proper keeping of accounts and records and for budgeting of funds.
- Enter into contracts.
- Receive gifts, donations, and bequests of money or property, real or personal, tangible or intangible, from any person, firm, corporation, or other legal entity.
- Sell or convey by bill of sale, deed, or other legal instrument any property, real or personal, received as a gift, donation, or bequest, upon such terms and conditions as the board of trustees deems to be in the best interest of the school and its students; and invest[13] such moneys.
- Approve and administer an annual operating budget in accordance with law.[14]

The FSDB was appropriated $50,188,933[15] for operations $9,074,268[16] for fixed capital outlay in the 2016-17 fiscal year.

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[7] Section 11.45(4), F.S. Or lesser time provided in law, concurrent resolution, or the Legislative Auditing Committee; however, the AG may postpone audits or other engagements based on an assessment of resources. *Id.*
[8] Section 11.45(7)(a), F.S. The criteria for financial audit reports are in s. 218.39, F.S.
[9] Section 1002.36(1), F.S.
[10] Section 1002.36(1), F.S. The Legislature appropriates fixed capital outlay moneys to the School on an annual basis from the Public Education Capital Outlay and Debt Service Trust Fund pursuant to Article XII, Section 9(a)(2) of the State Constitution.
[11] Section 1002.36(4), F.S. The School board of trustees consists of seven members who are appointed by the Governor and confirmed by the Senate. One of its members must be a blind person, and one must be a deaf person. Each member is required to have been a Florida resident for at least ten years and the term of office for each member is four years.
[12] Section 1002.36(4)(c), F.S.
[13] In securities enumerated under s. 215.47(1), (2)(c), (3), (4), and (10), and in The Common Fund, an Investment Management Fund exclusively for nonprofit educational institutions.
[14] See sections 1011.56 and 1011.57, F.S.
[15] Specific Appropriation 113, General Appropriations Act, ch. 2016-66, L.O.F.
[16] Specific Appropriation 26, General Appropriations Act, ch. 2016-66, L.O.F.

Worker's Compensation Coverage

Florida law requires organizations, including the Division of Vocational Rehabilitation (VR) and the Division of Blind Services (DBS),[17] to cooperate to better assist individuals with disabilities in the workplace.[18] The DBS and the VR each provide community-based work experiences to their adult and youth clients.[19]

Generally, employers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment.[20] For such injuries, an employer is responsible for providing medical treatment,[21] and compensation in the event of employee disability or death.[22] Specific employer coverage requirements are based on the type of industry, number of employees, and entity organization.[23]

Controlled Open Enrollment

Controlled open enrollment is a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.[24] School districts have the option to offer controlled open enrollment within the public schools in addition to existing choice programs[25] such as virtual instruction programs, magnet schools, alternative schools, special programs, collegiate high school programs, advanced placement, and dual enrollment.[26] The district school board must adopt by rule and post on the district website a controlled open enrollment plan.[27]

Virtual Instruction

A student is eligible to participate in the Florida Virtual School (FLVS) or in a virtual instruction program offered by the school district or by a virtual charter school operated in the district in which the student resides[28] if he or she meets one of the following:[29]

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[17] Both divisions are divisions within the Florida Department of Education. Section 20.15(3), F.S.
[18] Section 413.80, F.S.
[19] Vocational Rehabilitation, *2015-2016 Annual Report*, at 6, *available at* http://www.rehabworks.org/docs/AnnualReport16.pdf and Florida Department of Education, Division of Blind Services, *Employer Services*, http://dbs.myflorida.com/Employer/index.html (last visited March 31, 2017).
[20] Section 440.09(1), F.S.
[21] Section 440.13, F.S.
[22] Section 440.15, F.S.
[23] Division of Workers' Compensation, *Coverage Requirements*, http://www.myfloridacfo.com/division/wc/Employer/coverage.htm#.WLc13vkrKCg (last visited March 31, 2017).
[24] Section 1002.31(1), F.S.
[25] Section 1002.20(6)(a), F.S.
[26] Section 1002.31(2)(a), F.S.
[27] *Id.* at (3)
[28] Virtual instruction programs are included as options under provisions relating to "controlled open enrollment." Section 1002.31(2)(a), F.S.
[29] Sections 1002.37(8), 1002.45(5), and 1002.455(2), F.S. These requirements apply to FLVS part-time instruction in kindergarten through grade 5 (section 1002.37(8)(a), F.S.); a virtual instruction program provided

- The student spent the prior school year in attendance at a public school in the state.
- The student is a dependent child of a member of the United States Armed Forces who transferred within the last 12 months to this state from another state or from a foreign country.
- The student was enrolled during the prior school year in a virtual instruction program[30] or a full-time FLVS program.[31]
- The student has a sibling who is currently enrolled in a virtual instruction program and the sibling was enrolled in that program at the end of the prior school year.
- The student is eligible to enter kindergarten or first grade.

The student is eligible to enter grades 2 through 5 and is enrolled full-time in a school district virtual instruction program, virtual charter school, or the FLVS.

Florida Polytechnic University

In 2012, [32] the Legislature created Florida Polytechnic University (FPU) as a state university.[33] By December 31, 2017,[34] FPU must:

- Achieve accreditation from the Commission on Colleges of the Southern Association of Colleges and Schools;
- Initiate the development of the new programs in the fields of science, technology, engineering, and mathematics;
- Seek discipline-specific accreditation for programs;
- Attain a minimum FTE of 1,244, with a minimum 50 percent of that FTE in the fields of science, technology, engineering, and mathematics and 20 percent in programs related to those fields;
- Complete facilities and infrastructure, including the Science and Technology Building, Phase I of the Wellness Center, and a residence hall or halls containing no fewer than 190 beds; and
- Have the ability to provide, either directly or where feasible through a shared services model, administration of financial aid, admissions, student support, information technology, and finance and accounting with an internal audit function.

by the school district or by a virtual charter school operated in the district (section 1002.45(5), F.S.); school district operated part-time or full-time kindergarten through grade 12 virtual instruction programs for students enrolled in the school district (section 1002.455(3)(a), F.S.); full-time virtual charter school instruction (Id. at (3)(b)); and virtual courses offered in the course code directory to students within the school district or to students in other school districts throughout the state (*Id.* at (3)(c)).

[30] Section 1002.45, F.S.

[31] Section 1002.37(8)(a), F.S.

[32] Sec. 1, ch. 2012-129, L.O.F.

[33] Section 1000.21(6), F.S. Florida Polytechnic University is one of the 12 state universities in Florida. The other state universities are the University of Florida, Florida State University, Florida Agricultural and Mechanical University, the University of South Florida, Florida Atlantic University, the University of West Florida, the University of Central Florida, The University of North Florida, Florida International University, Florida Gulf Coast University, and New College of Florida.

[34] The date by which Florida Polytechnic University must fulfill those criteria was modified from December 31, 2016 to December 31, 2017, by section 30 the implementing bill to the 2016-2017 General Appropriations Act.

Commissioner of Education

The Commissioner of Education (Commissioner) is appointed by the State Board of Education (SBE)[35] and serves as the Executive Director of the DOE.[36] The Commissioner is the chief educational officer of the state, and is responsible for giving full assistance to the SBE in enforcing compliance with the mission and goals of the K-20 education system except for the State University System.[37] The commissioner's office operates all statewide functions necessary to support the State Board of Education, including strategic planning and budget development, general administration, assessment, and accountability.[38]

The DOE is responsible to coordinate, when necessary, the use of educational facilities during emergency activations among federal and state agencies, local school districts, colleges and universities.[39] The DOE also serves as the primary liaisons in coordinating all phases of emergency response from pre-disaster planning through post disaster recovery of educational facilities.[40]

The DOE has a process in place to gather information from superintendents, Florida College System institution presidents, VR directors, and Blind Services directors when an emergency situation has occurred and a process to report the needs.[41] DOE staff members are assigned to serve as contacts (called "Emergency Buddies") to all school districts and colleges.[42] In an emergency situation, the Commissioner activates the Emergency Buddies for the affected areas of the state. The Emergency Buddies contact their assigned districts and colleges and collect specific information.[43] The headquarters offices for the Divisions of Blind Services and Vocational Rehabilitation perform the same function for their offices[44]. The information from each specified education sector is provided to the department's emergency management staff to be compiled into a summary report for the Commissioner.[45]

Early Childhood Music Education Incentive Pilot Program

Florida's state standards for visual and performing arts establish specific curricular content and include distinct grade level expectations for the core content knowledge and skills that a student is expected to acquire by each grade level from kindergarten through grade 5.[46]

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[35] Art. IX, Sec. 2, Fla. Const.
[36] Section 20.15(2), F.S.
[37] Section 1001.10(1), F.S.
[38] Section 1001.10(2), F.S.
[39] Florida Division of Emergency Management, *The State of Florida 2016 Comprehensive Emergency Management Plan, 2016 Draft Revision*, http://www.floridadisaster.org/documents/CEMP/2016/2016%20State%20CEMP%20(COMPLETE%20FINAL%20DRAFT).pdf, at ESF 6 Appendix, p. 10.
[40] *Id.*
[41] Email, Florida Department of Education (March 17, 2017).
[42] *Id.*
[43] Email, Florida Department of Education (March 17, 2017).
[44] *Id.*
[45] *Id.*
[46] Section 1003.41(2)(e), F.S.

Current law[47] requires the Commissioner of Education to publish an annual report that describes student access and participation in fine arts courses and provides information about educators who instruct fine arts, facilities where the instruction is taking place, and the manner in which the curricular content is provided. The report must be posted on the DOE's website and updated annually.[48]

According to data from the 2015-2016 annual report,[49] the number of K-2 students enrolled statewide in music education programs as a percentage of total K-2 student enrollment has decreased. In the 2011-2012 school year, there were 575,262 K-2 students enrolled in music education programs (87 percent). By the 2015-2016 school year, K-2 student enrollment in music education programs had decreased to 513,648 (82 percent).

In some school districts, there is no reported K-2 student enrollment in music education programs.[50]

III. Effect of Proposed Changes:

The bill codifies responsibilities for the Auditor General, extends the date by which Florida Polytechnic University must meet statutory criteria, expands the authority of the Commissioner of Education, and establishes the Early Childhood Music Education Incentive Pilot Program.

Auditor General (Section 1)

Section 1 codifies the requirement for the Auditor General to conduct financial audits of accounts and records of the Florida School for the Deaf and the Blind.

Worker's Compensation Coverage (Sections 2 and 3)

Sections 2 and 3 amend ss. 413.011 and 413.209, F.S., respectively, to require that individuals who participate in an on-the-job training activity through the DBS or the VR be deemed an employee of the state for purposes of workers' compensation coverage.

Virtual Instruction (Section 5, 6, 7, 8, 11, 12, and 13)

Section 5 amends s. 1002.31, F.S., to expand available controlled open enrollment options to include virtual charter schools and district virtual programs.

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[47] Section 1003.4995, F.S.
[48] *Id.*
[49] The Florida Senate staff analysis of Florida Department of Education, Florida's PK-20 Education Information Portal, *Fine Arts*, https://edstats.fldoe.org/SASWebReportStudio/openRVUrl.do?rsRID=SBIP%3A%2F%2FMETASERVER%2FARM%2FPERA%2FEIAS%2FFINE+ARTS%2FWEB+REPORTS%2FFine+Arts+Enrollment.srx%28Report%29 (last visited April 4, 2017)
[50] School districts with no reported student enrollment include Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, and Lafayette. *Id.*

Section 8 repeals s. 1002.455, F.S., to eliminate the eligibility requirements for student participation in virtual instruction through the Florida Virtual School and in virtual instruction programs. As a result, all students enrolled in public or private schools, or in a home education program are eligible to participate in virtual instruction.

Additionally, section 7 amends s. 1002.45, F.S., to modify student participation requirements related to virtual instruction program. Specifically, this section:

- Removes the requirement that student enrollment in a virtual instruction program be limited to a program provided by a school district or virtual charter school operated by the district in which the student resides. As a result, the bill may allow a student to enroll in virtual instruction provided by any school district or virtual charter school.
- Allows a student enrolled in a virtual instruction program or virtual charter school to take state assessment tests in the district in which the student enrolls, in addition to where the student resides. This section also specifies that if requested by the provider, the district of residence must provide the student with access to the district's testing facilities.

Sections 6, 11, 12, and 13 conform cross-references and make technical changes to ss. 1002.33, 1002.37, 1003.498, and 1011.62, F.S., respectively, to account for the repeal of s. 1002.455, F.S.

Florida Polytechnic University (Section 10)

Section 10 codifies the December 31, 2017, deadline by which the Florida Polytechnic University must meet the criteria established in law.[51]

Commissioner of Education (Section 4)

Section 4 expands the Commissioner of Education's (Commissioner) authority and responsibility for supporting all sectors during an emergency and will be helpful in securing necessary information in a timely manner before, during, and after any emergency situation.[52] This section emphasizes that all sectors should work with the Commissioner to assess needs and direct resources needed to return the facilities to operation as quickly as possible.[53]

Early Childhood Music Education Incentive Pilot Program (Section 9)

Section 9 establishes the three-year Early Childhood Music Education Incentive Pilot Program (pilot program) beginning with the 2017-2018 school year to assist selected school districts in implementing comprehensive music education programs for students in kindergarten through grade 2.

This section establishes school district eligibility requirements, which include the superintendent certifying to the Commissioner that the school district has established a comprehensive music education program that:

- Includes all students at the school enrolled in kindergarten through grade 2.

[51] Section 1004.345, F.S.
[52] Email, Florida Department of Education (March 17, 2017).
[53] *Id.*

- Is staffed by certified music educators.
- Provides music instruction for at least 30 consecutive minutes 2 days a week.
- Complies with class size requirements under s. 1003.03.
- Complies with the department's standards for early childhood music education programs for students in kindergarten through grade 2.

Section 9 requires the Commissioner to select school districts for participation in the pilot program, subject to legislative appropriation, based on the school district's proximity to the University of Florida (UF) and needs-based criteria established by the State Board of Education (SBE). Selected school districts must annually receive $150 per full-time equivalent student in kindergarten through grade 2 who is enrolled in a comprehensive music education program. This section provides that each selected school district must annually certify, in a format prescribed by the department, that the school district continues to meet initial eligibility requirements. If a selected school district fails to provide the annual certification for a fiscal year, the school district must return all funds received through the pilot program for that fiscal year.

Section 9 requires the UF's College of Education to evaluate the effectiveness of the pilot program by measuring student academic performance and the success of the program. The evaluation must include, but is not limited to, a quantitative analysis of student achievement and a qualitative evaluation of students enrolled in the comprehensive music education programs.

Section 9 authorizes the SBE to adopt rules to administer the pilot program.

The bill takes 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:

Under this bill, private sector entities may experience a cost savings by not having to provide workers compensation coverage for a person participating in a Division of Blind Services (DBS) or Vocational Rehabilitation (VR) on-the-job-training.

C. Government Sector Impact:

The Division of Risk Management expects to incur additional claim costs for covering DBS and VR on-the-job training participants.[54]

The bill repeals s. 1002.455, F.S., relating to student eligibility for K-12 virtual instruction. These changes will open various virtual education options that are not currently available to students who did not attend public school in the prior year. The estimated fiscal impact to the Florida Education Finance Program (FEFP) to fund the expansion of student eligibility for public virtual education is expected to be absorbed within the FEFP calculation and is estimated at $4,363,075.

The bill authorizes the Commissioner of Education to select school districts to participate in the Early Childhood Music Education Incentive Pilot Program. Those participating districts must annually receive $150 per full-time equivalent student in kindergarten through grade 2 enrolled in a comprehensive music program contingent upon a legislative appropriation for the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.45, 413.011, 1001.10, 1002.31, 1002.33, 1002.37, 1002.45, 1003.498,1004.345, and 1011.62.

The bill creates the following sections of Florida Statutes: 413.209 and 1003.481.

This bill repeals section 1002.455 of the Florida Statutes.

IX. Additional Information:

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

CS /CS by Appropriations on April 25, 2017:

[54] Department of Financial Services, *Legislative Bill Analysis for SB 868* (February 22, 2017).

The committee substitute:

- Requires that individuals who participate in an on-the-job training activity through the DBS or the VR be deemed an employee of the state for purposes of workers' compensation coverage.
- Repeals s. 1002.455, F.S., to eliminate the eligibility requirements for student participation in virtual instruction through the Florida Virtual School and in virtual instruction programs. As a result, all students enrolled in public or private schools, or in a home education program are eligible to participate in virtual instruction.
- Modifies student participation requirements related to virtual instruction program. Specifically, the committee substitute:
  - Removes the requirement that student enrollment in a virtual instruction program be limited to a program provided by a school district or virtual charter school operated by the district in which the student resides. As a result, the bill may allow a student to enroll in virtual instruction provided by any school district or virtual charter school.
  - Allows a student enrolled in a virtual instruction program or virtual charter school to take state assessment tests in the district in which the student enrolls, in addition to where the student resides. This section also specifies that if requested by the provider, the district of residence must provide the student with access to the district's testing facilities.

CS by Education on April 3, 2017

The committee substitute adds a provision to the bill, establishing the Early Childhood Music Education Incentive Pilot Program (pilot program) as a 3-school year program in the Department of Education to assist selected school districts in implementing comprehensive music education programs for students in kindergarten through grade 2. Specifically, the committee substitute:

- Provides eligibility criteria for school districts to participate in the pilot program.
- Requires the Commissioner of Education to select school districts based on specified criteria.
- Includes a provision to provide selected school districts $150 annually per FTE enrolled in the program, subject to legislative appropriation.
- Requires a participating school district to annually certify eligibility for the program.
- Requires the University of Florida's College of Education to evaluate the effectiveness of the program.
- Authorizes the State Board of Education to adopt rules to administer the pilot program provisions.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Between lines 48 and 49
insert:

Section 2. Subsection (2) of section 413.011, Florida Statutes, is amended to read:

413.011 Division of Blind Services, legislative policy, intent; internal organizational structure and powers; Rehabilitation Council for the Blind.—

(2) PROGRAM OF SERVICES.—

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(a) It is the intent of the Legislature to establish a coordinated program of services which will be available to individuals throughout this state who are blind. The program must be designed to maximize employment opportunities for such individuals and to increase their independence and self-sufficiency.

(b) A client of the division who is participating in on-the-job training shall be deemed an employee of the state for purposes of workers' compensation coverage.

Section 3. Section 413.209, Florida Statutes, is created to read:

413.209 Workers' compensation coverage for clients in on-the-job training.—A client of the Division of Vocational Rehabilitation of the Department of Education who is participating in on-the-job training as a vocational rehabilitation service shall be deemed an employee of the state for purposes of workers' compensation coverage.

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

And the title is amended as follows:

Between lines 4 and 5

insert:

amending s. 413.011, F.S.; providing that a client of the Division of Blind Services of the Department of Education is considered an employee of the state for purposes of workers' compensation coverage; creating s. 413.209, F.S.; providing that a specified client of the Division of Vocational Rehabilitation of the Department of Education is considered an employee of

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the state for purposes of workers' compensation coverage;

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment (with title amendment)

Between lines 61 and 62

insert:

Section 3. Paragraph (a) of subsection (2) of section 1002.31, Florida Statutes, is amended to read:

1002.31 Controlled open enrollment; Public school parental choice.—

(2)(a) Beginning by the 2017-2018 school year, as part of a school district’s or charter school’s controlled open enrollment

process, and in addition to the existing public school choice programs provided in s. 1002.20(6)(a), each district school board or charter school shall allow a parent from any school district in the state whose child is not subject to a current expulsion or suspension to enroll his or her child in and transport his or her child to any public school, including charter schools, virtual charter schools, and district virtual programs, that have ~~has~~ not reached capacity in the district, subject to the maximum class size pursuant to s. 1003.03 and s. 1, Art. IX of the State Constitution, if applicable. The school district or charter school shall accept the student, pursuant to that school district's or charter school's controlled open enrollment process, and report the student for purposes of the school district's or charter school's funding pursuant to the Florida Education Finance Program. A school district or charter school may provide transportation to students described under this section.

Section 4. Subsection (8) of section 1002.37, Florida Statutes, is amended to read:

1002.37 The Florida Virtual School.—

(8)(a) The Florida Virtual School may provide full-time and part-time instruction for students in kindergarten through grade 12. ~~To receive part-time instruction in kindergarten through grade 5, a student must meet at least one of the eligibility criteria in s. 1002.455(2).~~

(b) For students receiving part-time instruction ~~in kindergarten through grade 5~~ and students receiving full-time instruction ~~in kindergarten through grade 12~~ from the Florida Virtual School, the full-time equivalent student enrollment

calculated under this subsection is subject to the requirements in s. 1011.61(4).

Section 5. Subsection (5) and paragraph (b) of subsection (6) of section 1002.45, Florida Statutes, are amended to read:

1002.45 Virtual instruction programs.—

(5) STUDENT ELIGIBILITY.—A student may enroll in a full-time or part-time virtual instruction program in kindergarten through grade 12 which is provided by a ~~the~~ school district or by a virtual charter school ~~operated in the district in which he or she resides if the student meets eligibility requirements for virtual instruction pursuant to s. 1002.455~~.

(6) STUDENT PARTICIPATION REQUIREMENTS.—Each student enrolled in a virtual instruction program or virtual charter school must:

(b) Take state assessment tests within the school district in which such student resides or enrolls, as contractually specified. If requested by the provider, the district of residence ~~which~~ must provide the student with access to the district's testing facilities.

Section 6. Section 1002.455, Florida Statutes, is repealed.

Section 7. Subsection (1) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(1) AUTHORIZATION.—Charter schools shall be part of the state's program of public education. All charter schools in Florida are public schools. A charter school may be formed by creating a new school or converting an existing public school to charter status. A charter school may operate a virtual charter school pursuant to s. 1002.45(1)(d) to provide full-time online

instruction to eligible students~~, pursuant to s. 1002.455,~~ in kindergarten through grade 12. An existing charter school that is seeking to become a virtual charter school must amend its charter or submit a new application pursuant to subsection (6) to become a virtual charter school. A virtual charter school is subject to the requirements of this section; however, a virtual charter school is exempt from subsections (18) and (19), subparagraphs (20)(a)2., 4., 5., and 7., paragraph (20)(c), and s. 1003.03. A public school may not use the term charter in its name unless it has been approved under this section.

Section 8. Subsection (2) of section 1003.498, Florida Statutes, is amended to read:

1003.498 School district virtual course offerings.—

(2) School districts may offer virtual courses for students enrolled in the school district. These courses must be identified in the course code directory. ~~Students who meet the eligibility requirements of s. 1002.455 may participate in these virtual course offerings.~~

(a) Any eligible student who is enrolled in a school district may register and enroll in an online course offered by his or her school district.

(b)1. Any eligible student who is enrolled in a school district may register and enroll in an online course offered by any other school district in the state. The school district in which the student completes the course shall report the student's completion of that course for funding pursuant to s. 1011.61(1)(c)1.b.(VI), and the home school district <u>may</u> ~~shall~~ not report the student for funding for that course.

2. The full-time equivalent student membership calculated

under this subsection is subject to the requirements in s. 1011.61(4). The Department of Education shall establish procedures to enable interdistrict coordination for the delivery and funding of this online option.

Section 9. Subsection (11) of section 1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(11) VIRTUAL EDUCATION CONTRIBUTION.—The Legislature may annually provide in the Florida Education Finance Program a virtual education contribution. The amount of the virtual education contribution shall be the difference between the amount per FTE established in the General Appropriations Act for virtual education and the amount per FTE for each district and the Florida Virtual School, which may be calculated by taking the sum of the base FEFP allocation, the discretionary local effort, the state-funded discretionary contribution, the discretionary millage compression supplement, the research-based reading instruction allocation, and the instructional materials allocation, and then dividing by the total unweighted FTE. This difference shall be multiplied by the virtual education unweighted FTE for <u>school district-operated part-time and full-time virtual instruction programs, full-time virtual charter school programs, virtual courses offered,</u> ~~programs and options identified in s. 1002.455(3)~~ and the Florida Virtual School and

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its franchises to equal the virtual education contribution and shall be included as a separate allocation in the funding formula.

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

And the title is amended as follows:

Delete line 8

and insert:

in an emergency situation; amending s. 1002.31, F.S.; revising available controlled open enrollment options to include virtual charter schools and district virtual programs; amending ss. 1002.37 and 1002.45, F.S.; revising student eligibility requirements for the Florida Virtual School and virtual instruction programs; repealing s. 1002.455, F.S., relating to student eligibility for K-12 virtual instruction; amending ss. 1002.33, 1003.498, and 1011.62, F.S.; conforming provisions to changes made by the act; creating s. 1003.481, F.S.;

By the Committee on Education; and Senator Galvano

581-03348-17 20171468c1

A bill to be entitled

An act relating to education; amending s. 11.45, F.S.; requiring the Auditor General to conduct annual audits of the Florida School for the Deaf and the Blind; amending s. 1001.10, F.S.; authorizing the Commissioner of Education to coordinate with specified entities to assess needs for resources and assistance in an emergency situation; creating s. 1003.481, F.S.; creating the Early Childhood Music Education Incentive Pilot Program within the Department of Education for a specified period; providing for school district eligibility; providing comprehensive music education program requirements; providing for school district selection, funding, and program payments; requiring selected school districts to annually provide a specified certification to the Commissioner of Education; requiring a selected school district to return funds under certain circumstances; requiring the University of Florida's College of Education to perform an evaluation; authorizing the State Board of Education to adopt rules; providing for expiration of the pilot program; amending s. 1004.345, F.S.; extending the timeframe by which the Florida Polytechnic University must meet specified criteria established by the Board of Governors of the State University System; providing an effective date.

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

581-03348-17 20171468c1

Section 1. Upon the expiration and reversion of the amendment to section 11.45, Florida Statutes, pursuant to section 36 of chapter 2016-62, Laws of Florida, paragraph (d) of subsection (2) of section 11.45, Florida Statutes, is amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(2) DUTIES.—The Auditor General shall:

(d) Annually conduct financial audits of the accounts and records of all district school boards in counties with populations of fewer than 150,000, according to the most recent federal decennial statewide census, and the Florida School for the Deaf and the Blind.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

Section 2. Subsection (8) is added to section 1001.10, Florida Statutes, to read:

1001.10 Commissioner of Education; general powers and duties.—

(8) In the event of an emergency, the commissioner may coordinate through the most appropriate means of communication with local school districts, Florida College System institutions, and satellite offices of the Division of Blind Services and the Division of Vocational Rehabilitation to assess the need for resources and assistance to enable each school,

institution, or satellite office the ability to reopen as soon as possible after considering the health, safety, and welfare of students and clients.

Section 3. Section 1003.481, Florida Statutes, is created to read:

1003.481 Early Childhood Music Education Incentive Pilot Program.—

(1) Beginning with the 2017-2018 school year, the Early Childhood Music Education Incentive Pilot Program is created within the Department of Education for a period of 3 school years. The purpose of the pilot program is to assist selected school districts in implementing comprehensive music education programs for students in kindergarten through grade 2.

(2) In order for a school district to be eligible for participation in the pilot program, the superintendent must certify to the Commissioner of Education, in a format prescribed by the department, that each elementary school within the district has established a comprehensive music education program that:

(a) Includes all students at the school enrolled in kindergarten through grade 2.

(b) Is staffed by certified music educators.

(c) Provides music instruction for at least 30 consecutive minutes 2 days a week.

(d) Complies with class size requirements under s. 1003.03.

(e) Complies with the department's standards for early childhood music education programs for students in kindergarten through grade 2.

(3)(a) The commissioner shall select school districts for

participation in the pilot program, subject to legislative appropriation, based on the school district's proximity to the University of Florida and needs-based criteria established by the State Board of Education. Selected school districts shall annually receive $150 per full-time equivalent student in kindergarten through grade 2 who is enrolled in a comprehensive music education program.

(b) To maintain eligibility for participation in the pilot program, a selected school district must annually certify to the commissioner, in a format prescribed by the department, that each elementary school within the district provides a comprehensive music education program that meets the requirements of subsection (2). If a selected school district fails to provide the annual certification for a fiscal year, the school district must return all funds received through the pilot program for that fiscal year.

(4) The University of Florida's College of Education shall evaluate the effectiveness of the pilot program by measuring student academic performance and the success of the program. The evaluation must include, but is not limited to, a quantitative analysis of student achievement and a qualitative evaluation of students enrolled in the comprehensive music education programs.

(5) The State Board of Education may adopt rules to administer this section.

(6) This section expires June 30, 2020.

Section 4. Upon the expiration and reversion of the amendment to section 1004.345, Florida Statutes, pursuant to section 36 of chapter 2016-62, Laws of Florida, subsection (1) of section 1004.345, Florida Statutes, is amended to read:

1004.345 The Florida Polytechnic University.—

(1) By December 31, 2017 ~~2016~~, the Florida Polytechnic University shall meet the following criteria as established by the Board of Governors:

(a) Achieve accreditation from the Commission on Colleges of the Southern Association of Colleges and Schools;

(b) Initiate the development of the new programs in the fields of science, technology, engineering, and mathematics;

(c) Seek discipline-specific accreditation for programs;

(d) Attain a minimum FTE of 1,244, with a minimum 50 percent of that FTE in the fields of science, technology, engineering, and mathematics and 20 percent in programs related to those fields;

(e) Complete facilities and infrastructure, including the Science and Technology Building, Phase I of the Wellness Center, and a residence hall or halls containing no fewer than 190 beds; and

(f) Have the ability to provide, either directly or where feasible through a shared services model, administration of financial aid, admissions, student support, information technology, and finance and accounting with an internal audit function.

Section 5. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Higher Education, *Chair*
Appropriations
Education
Governmental Oversight and Accountability
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR BILL GALVANO
21st District

April 20, 2017

Senator Jack Latvala
Committee on Appropriations
201 Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Latvala:

I respectfully request that CS/SB 1468 Education, be scheduled for a hearing in the Committee on Appropriations.

If I can provide additional documentation to you on this, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: Mike Hansen
Alicia Weiss

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
❒ 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

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)

4/25/17
Meeting Date

1468
Bill Number (if applicable)

155156
Amendment Barcode (if applicable)

Topic Worker's Comp for VR

Name Suzanne Sewell

Job Title President & CEO

Address 2475 Apalachee Parkway
Street

Phone 850-942-3500

Tallahassee, FL 32308
City *State* *Zip*

Email SSewell@floridarf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Rehabilitation Facilities

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)

4/25/2017
Meeting Date

1468
Bill Number (if applicable)

755156
Amendment Barcode (if applicable)

Topic SB 1468- Amendment 755156

Name Tanya Cooper

Job Title Director, Governmental Relations

Address 325 W. Gaines St.
Street

Phone 850.245.9633

Tallahassee | Fl | 32399
City | *State* | *Zip*

Email Tanya.Cooper@fldoe.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Education

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

1468
Bill Number (if applicable)

416750
Amendment Barcode (if applicable)

Topic SB 1468- Amendment 416750

Name Tanya Cooper

Job Title Director, Governmental Relations

Address 325 W. Gaines St.
Street

Phone 850.245.9633

Tallahassee
City

Fl
State

32399
Zip

Email Tanya.Cooper@fldoe.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Education

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-25-17
Meeting Date

1468
Bill Number (if applicable)

416750
Amendment Barcode (if applicable)

Topic Relating to Education

Name Holly Sagues

Job Title Exec. Director Gov. Affairs

Address Metro Center Blvd
Street

Phone 321-695-1073

Orlando FL 32835
City *State* *Zip*

Email hsagues@flvs.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Virtual School

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)

4/25/2017
Meeting Date

Topic _____ Bill Number 1468 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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.

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

S-001 (10/20/11)

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 784 (314566)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Gainer and others
SUBJECT:	Department of Highway Safety and Motor Vehicles
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	**Fav/CS**
2.	Wells	Pitts	ATD	**Recommend: Fav/CS**
3.	Wells	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 784 makes numerous changes relating to the Department of Highway Safety and Motor Vehicles (DHSMV). Specifically, the bill:

- Creates a definition of an autocycle, requires occupants of autocycles to wear safety belts, and exempts drivers of autocycles from being required to have a motorcycle endorsement or motorcycles license, or from completing motorcycle knowledge and skills testing in order to operate the autocycle;
- Allows volunteer firefighters to use red and white, in addition to red, warning signals;
- Updates various commercial motor vehicle (CMV) regulations to address compatibility issues with federal law;
- Allows a person without a driver license to operate an autonomous vehicle in autonomous mode if the person cannot take control of the vehicle;
- Applies certain insurance coverage requirements, should legislation addressing insurance for transportation network companies (TNCs) become law, to autonomous vehicles used by TNCs to provide transportation, regardless of whether a human operator is physically present in the vehicle when the ride occurs;
- Authorizes a board of county commissioners to require, by ordinance, that the clerk of court collect an additional $5 with each *criminal*, instead of *civil* traffic penalty, which is used to fund driver education programs in schools;

- Changes "construction zone" to "work zone" for the purpose of double speeding penalties in such zones if required signs are posted and workers are present;
- Requires interstate charter buses to register as apportionable vehicles;
- Changes references to the organization "Prevent Blindness Florida" to "Preserve Vision Florida";
- Requires tax collectors perform the same motor vehicle registration and driver license services for non-county residents as they do for their home county residents;
- Effective July 1, 2018, expands the allowable operations and authorized agents of the DHSMV electronic filing system;
- Increases the time-frame apportionable vehicles must replace their license plates from annually to every five years;
- Allows a person driving a rental vehicle who is stopped by a law enforcement officer or agent of the DHSMV to show an electronic copy of a rental agreement;
- Revises the eligibility requirement for the agricultural restricted license plate to allow certain agricultural trucks that operate within the state, instead of within a 150-mile radius of the truck's home address, be eligible for the restricted license plate;
- Removes specialty license plates from statute that have been discontinued by the DHSMV;
- Authorizes a trailer to be considered a motor vehicle for purposes of receiving specified license plates;
- Creates a Purple Heart motorcycle license plate and a Bronze Star license plate;
- Clarifies the definition of motor vehicle dealers and motor vehicle brokers;
- Makes numerous changes to transporter license plates, including requiring more information from applicants for transporter plates and adding penalties for the misuse of such plates;
- Requires DHSMV work with the Agency for State Technology to provide digital proof of driver licenses;
- Allows a person diagnosed with posttraumatic stress disorder (PTSD) or traumatic brain injury (TBI) to be eligible to receive a "D" designation on his or her identification (ID) card;
- Increases the amount of time a Florida Highway Patrol (FHP) trooper must stay employed with the FHP to avoid having to reimburse training costs from two years to three years;
- Revises DHSMV reporting requirements relating to driver license suspensions for persons who do not meet school attendance requirements;
- Authorizes tax collectors to retain fees or a portion of fees when they administer subsequent driver license examinations or reinstate licenses;
- Allows the DHSMV to issue a no-fee replacement identification card upon proof to the DHSMV that the card was stolen;
- Provides the option for expedited shipping of a driver license or identification card;
- Removes an obsolete provision relating to specialty driver licenses; and
- Allows for-hire passenger vehicles be insured by an eligible surplus lines insurer and modifies certain insurance limits;
- Prohibits a person from using any device prohibited by the Federal Communications Commission which would cause interference with the legal use of a global positioning system to track vehicles; and
- Amends numerous cross-references to reflect changes made by the bill.

The bill is intended to address a broad range of federal compliance, customer service and administrative efficiency issues; however, these changes have various indeterminate impacts on state revenues and expenditures.

The Revenue Estimating Conference (REC) reviewed identical sections of the bill on March 10, 2017.1 The REC estimates that replacing stolen identification cards at no charge to a customer (section 36 of the bill) will have an insignificant negative impact to the General Revenue Fund until Fiscal Years 2020 through 2022, when it will have a negative impact of $100,000 annually.

The REC estimates that allowing local tax collectors to retain fees or portions of fees for administering subsequent driver license examinations or reinstating licenses (sections 34and 37) will shift approximately $5 million from the Highway Safety Operating Trust Fund each year to the local tax collectors.

Additionally, the REC estimates, authorizing expedited shipping fees for driver licenses and identification cards (section 37) will have an indeterminate impact in revenues to the extent that expedited shipping is requested.

Except otherwise provided, the bill takes effect October 1, 2017.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of the Proposed Changes.

III. Effect of Proposed Changes:

Autocycles (Sections 1, 6, 11, 29, and 34)

Present Situation

An autocycle is commonly defined as a three-wheel motorcycle that has a steering wheel and seating that does not require the operator to straddle or sit astride it.[2] The term "autocycle" is not defined in federal law; however, as of February 2016, at least 22 states have created statutory definitions for an autocycle.[3] Currently, the DHSMV registers autocycles as motorcycles.[4] This means operators of autocycles, generally, are not required to maintain insurance[5] or wear safety belts[6], but are required to:

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[1] Office of Economic and Demographic Research, Revenue Estimating Conference, *Highway Safety Fees – HB 545* (Mar. 10, 2017), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0310.pdf at p. 22-30 (last visited Mar. 15, 2017).
[2] American Association of Motor Vehicle Administrators (AAMVA), *Best Practices for the Regulation of Three-Wheel Vehicles* (October 2013), *available at* http://www.aamva.org/3wheelvehiclebp/ at p. 4 (last visited Mar. 22, 2017).
[3] National Conference of State Legislatures (NCSL), *Traffic Safety Trends – State Legislative Action 2015* (Feb. 2016), *available at* http://www.ncsl.org/Documents/transportation/2015_Traffic_Safety_Trends.pdf at p. 23 (last visited Mar. 22, 2017).
[4] DHSMV Technical Advisory RS/TL16-015, *Registering the Slingshot* (June 20, 2016), *available at* https://www.flhsmv.gov/dmv/bulletins/2016/ta_rstl16-015.pdf
[5] See ch. 324, F.S., on Motor Vehicle Financial Responsibility.
[6] See s. 316.614(3)(a)5., F.S.

- Maintain a motorcycle endorsement or motorcycle license;[7]
- Wear a helmet, unless over 21 years of age with at least $10,000 of medical insurance or riding in an enclosed cab;[8] and
- Wear eye protection[9];

Since autocycles share more characteristics with passenger motor vehicles than motorcycles, some of the motorcycle requirements, or lack of requirements, may or may not be necessary for autocycles. For example, studies suggest a motorcycle endorsement or motorcycle license should not be required for operating an autocycle.[10] Motorcycle rider courses primarily focus on operating a motorcycle in which the operator sits astride the saddle and uses handlebars, while using his or her body weight, balance, and position on the motorcycle to corner or stop; however, operating an autocycle requires mechanics similar to a passenger motor vehicle. At least 21 states do not require a motorcycle endorsement or motorcycle license to operate an autocycle.[11]

There is little research or crash data available concerning the safety of autocycles. Since autocycles fall under the definition of a motorcycle they are only required to meet the federal safety standards required for motorcycles; thus, autocycles are not required to meet the crash safety standards or occupant safety criteria that a regular passenger motor vehicle is required to meet. The National Highway Traffic Safety Administration (NHTSA) has concerns that the overall appearance of autocycles, being closer to the appearance of a car than a motorcycle, may cause people to think autocycles are as safe as passenger motor vehicles.[12]

Effect of Proposed Changes

Section 1 amends s. 316.003, F.S., defining an autocycle as a three-wheel motorcycle that has two wheels in the front and one wheel in the back, is equipped with a roll cage or roll hoops, safety belts for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it and is manufactured by a National Highway Traffic Safety Administration (NHTSA) registered manufacturer in accordance with the applicable federal motorcycle safety standards.

Sections 1 and 11 include an autocycle in the definition of a motorcycle. Also, the definition of motorcycle is amended to exempt a vehicle in which the operator is enclosed by a cabin unless the vehicle meets the requirements set forth by the NHTSA for a motorcycle.

Section 6 amends s. 316.614, F.S., to require that the operator, front seat passenger, and any passenger under the age of 18 years old in an autocycle wear a safety belt.

Sections 29 and 34 amend ss. 322.03 and 322.12, F.S., respectively, to exempt operators of an autocycle from needing a motorcycle endorsement or motorcycle license, and from needing to complete motorcycle skills and motorcycle knowledge testing to operate an autocycle.

[7] Section 322.03(4), F.S.
[8] Section 316.211, F.S.
[9] Section 316.211(2), F.S.
[10] AAMVA, *supra* note 1 at p. 5 and 9
[11] NCSL, *supra* note 2
[12] AAMVA, *supra* note 2 at p. 2

Volunteer Firefighters – Red and White Warning Signals (Sections 2, 3, and 28)

Present Situation

Section 316.2397, F.S., authorizes vehicles of the fire department and fire patrol, including vehicles of permitted volunteer firefighters, to show or display red warning signals. Specifically, active volunteer firefighters are authorized to display such red lights or warning signals if the volunteer firefighter has secured a written permit from the chief executive officers of the firefighting organization allowing the use of such signals. This permit is required to be carried at all times while the firefighter displays the red warning signals. The active firefighter may display red lights on their privately owned vehicle while en route to a fire or other emergency in the line of duty, or while en route to the fire station for the purpose of proceeding to a fire or other emergency.[13]

Section 316.2398, F.S., requires that the warning signals must be visible from the front and rear of the vehicle, and requires:

- No more than two red warning signals may be displayed; and
- No inscription of any kind may appear across the face of the lens of the warning signal.

A violation of these requirements is a nonmoving violation, punishable as provided in ch. 318, F.S.[14], and any volunteer firefighter who violates these requirements shall be dismissed from membership in the firefighting organization.[15]

Effect of Proposed Changes

Sections 2, 3, and 19 amend ss. 316.2397, 316.2398, and 322.01, F.S., respectively, to provide that volunteer firefighters may use red or *red and white* warning signals where provided by law. Additionally, the bill removes the prohibition on the number of warning signals a volunteer firefighter or medical staff may use; instead, the responding agency may determine the number of warning signals that may be displayed on the responding vehicle to maintain public safety and the safety of the responding vehicle occupants.

Wrecker Lights (Section 2)

Present Situation

Section 316.2397, F.S., requires wreckers use amber rotating or flashing lights while performing recoveries and loading on the roadside day or night, and they may use such lights while towing a vehicle on wheel lifts, slings, or under reach if the operator deems such lights necessary. Additionally, a flatbed, car carrier, or rollback may not use such lights when hauling a vehicle unless it creates a hazard to other motorists because of protruding objects.

[13] Section 316.2398(1), F.S.
[14] Chapter 318.18, F.S., provides that a nonmoving traffic violation is a $30 penalty plus court costs. This could result in a penalty and costs totaling up to $108.
[15] Section 316.2398(5), F.S.

Effect of Proposed Changes

Section 2 amends s. 316.2397, F.S., to remove the prohibition against flatbeds, car carriers, or rollbacks from using amber rotating or flashing lights when hauling vehicles. The section requires such vehicles, when registered as wreckers pursuant to s. 320.08(5)(d) or (e), F.S., use amber rotating or flashing lights while performing recoveries and loading on the roadside, and authorizes the use of such lights if the operator of the wrecker deems such lights necessary.

Federal Motor Carrier Safety Administration Compatibility (Section 4)

Present Situation

The Federal Motor Carrier Safety Administration (FMCSA) was established within the United States Department of Transportation on January 1, 2000. Its primary mission is to prevent commercial motor vehicle (CMV)-related fatalities and injuries.[16]

Section 316.302, F.S., provides that all owners and drivers of CMVs[17] operated on the public highways of this state while engaged in *interstate* commerce are subject to the rules and regulations contained in the following parts of the Federal Motor Carrier Safety Regulations[18]:

- Part 382, Controlled Substance and Alcohol Use and Testing;
- Part 385, Safety Fitness Procedures;
- Part 390, General Federal Motor Carrier Safety Regulations;
- Part 391, Qualifications of Drivers;
- Part 392, Driving of Commercial Motor Vehicles;
- Part 393, Parts and Accessories Necessary for Safe Operation;
- Part 395, Hours of Service of Drivers;
- Part 396, Inspection, Repair, and Maintenance; and
- Part 397, Transportation of Hazardous Materials; Driving and Parking Rules.

Owners and drivers of CMVs engaged in *intrastate* commerce are subject to the same rules and regulations, unless otherwise provided in s. 316.302, F.S., as such rules and regulations existed on December 31, 2012.[19] To remain compatible with the Federal Motor Carrier Safety Regulations, states generally have up to three years from the effective date of new federal requirements to adopt and enforce such requirements.[20] States that remain incompatible risk losing federal funding. A 2007 Florida State Motor Carrier Safety Assistance Program (MCSAP) review found that the Florida Statutes contain multiple compatibility issues.[21]

[16] FMCSA website, *About Us, available at* https://www.fmcsa.dot.gov/mission/about-us (last visited Feb. 23, 2017).
[17] Section 316.003(12), F.S., defines "commercial motor vehicle" as "any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle: (a) Has a gross vehicle weight rating of 10,000 pounds or more; (b) Is designed to transport more than 15 passengers, including the driver; or (c) Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended (49 U.S.C. ss. 1801 et seq.)."
[18] 49 C.F.R. ch. III, subchapter B.
[19] Section 316.302(1)(b), F.S.
[20] 49 C.F.R. *Appendix A to Part 355 – Guidelines for the Regulatory Review – State Determinations* (2016)
[21] 2007 Florida State MCSAP Review, *Summary Findings, Recommendations, and Noteworthy Practices* (June 2007) (on file with the Senate Committee on Transportation).

2007 Florida State MCSAP Review Findings

Section 316.302(1)(b), F.S., provides an exception from 49 C.F.R. s. 390.5 as it relates to the definition of a bus, which is defined as "any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs." Florida law excludes taxicabs from the definition of a bus.[22] The MCSAP Review noted that Florida Statutes "exempting, from the definition of a bus, taxicabs as it applies to the intrastate private transportation of passengers, is not compatible" with Federal law.[23]

Federal law prohibits certain lamps and reflective devices from being obscured on CMVs.[24] However, s. 316.215(5), F.S., provides an exception from this requirement for front-end loading collection vehicles that are engaged in collecting solid waste or recyclable or recovered materials, and are being operated at less than 20 miles per hour with hazard-warning lights activated. According to the MCSAP review, federal law provides no such exemption.[25]

Section 316.302(2)(d), F.S., provides an exemption from compliance with 49 C.F.R. s. 395.8, requiring driver's record of duty status, for drivers of CMVs if the driver:

- Is operating solely in intrastate commerce;
- Is not transporting any hazardous materials in amounts that require placarding[26];
- Is within 150-air miles of the vehicle's base location; and
- Complies with specific federal requirements relating to hours of service.[27]

Additionally, state law provides that if a driver is not released from duty within 12 hours of arriving on duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period. The MCSAP review found that the exemption and alternate records requirement contained in s. 316.302(2)(d), F.S., does not comply with federal regulations because the federal exemption also requires that the driver return to the work reporting location and is released from work within 12 consecutive hours.[28]

Federal law allows a state to exempt a CMV from all or part of its laws or regulations relating to intrastate commerce if the vehicle's gross vehicle weight, gross vehicle weight rating, gross combined weight, or gross combined weight rating is less than 26,001, and the vehicle is not:

- Transporting hazardous materials requiring a placard; or
- Designed or used to transport 16 or more people, including the driver.[29]

However, s. 316.302(2)(f), F.S., provides exemptions from federal laws or regulations for a person who operates a CMV solely in intrastate commerce, having a *declared* gross vehicle weight of less than 26,001 pounds, and who is not transporting hazardous materials in an amount that requires placarding, or who is transporting petroleum products. According to the MCSAP

[22] Section 316.003(6), F.S.
[23] 2007 Florida State MCSAP Review, *supra* note 20 at p. 2, *FL/FI-1*.
[24] 49 C.F.R. s. 393.9(b)
[25] 2007 Florida State MCSAP Review, *supra* note 20 at p. 4, *FL/FI-7*.
[26] Pursuant to 49 C.F.R. part 172
[27] As provided in 49 C.F.R. s. 395.1(e)(1)(iii) and (v).
[28] 2007 Florida State MCSAP Review, *supra* note 20 at p. 5, *FL/FI-8*.
[29] 49 C.F.R. s. 350.341(a)

Review, the State interprets this statute as exempting such vehicles transporting petroleum products even if a hazardous materials placard is required, which is not in compliance with federal regulations.[30]

Maximum Driving Time

Section 316.302(2), F.S., provides prohibitions to length of time CMV drivers may drive, as well as exemptions from federal requirements for specified vehicles. Section 316.302(2)(b), F.S., provides that a person who operates a CMV solely in intrastate commerce without any hazardous materials in amounts requiring placarding may not drive:

- More than 12 hours following 10 consecutive hours off duty; or
- For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty.

Except as provided in the federal hours of service rules[31], a person operating a CMV solely in intrastate commerce not transporting any hazardous material may not drive after having been on duty more than 70 hours in any period of seven consecutive days or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week.[32] Upon request of DHSMV, motor carriers are required to furnish time records or other written verification so that DHSMV can determine compliance with the hours of service requirements. Falsification of time records is subject to a civil penalty not to exceed $100.[33]

Effect of Proposed Changes

Section 4 amends multiple provisions in s. 316.302, F.S., addressing federal compatibility issues.

This section amends s. 316.302(1), F.S., to clarify that the section applies to all CMVs except as provided in s. 316.302(3), F.S., relating to covered farm vehicles.

This section amends s. 316.302(1)(b), F.S., to remove an exception to federal law as it relates to the definition of a bus.

This section adopts federal laws that intrastate CMV owners and drivers are required to comply with as such federal rules and regulations existed on December 31, 2016.[34] Examples of some of the regulations adopted that directly affect intrastate CMVs include:

- Amending the definition of *gross combination weight rating* to provide clarification;[35] and

[30] 2007 Florida State MCSAP Review, *supra* note 20 at p. 5, *FL/FI-3*.
[31] 49 C.F.R. s. 395.1
[32] Section 316.302(2)(c), F.S.
[33] This penalty is found in 316.302(2)(c), F.S.; However, s. 316.3025, F.S., relating to CMV penalties, provides that a penalty of $100 may be assessed for a violation of s. 316.302(2)(b) or (c), F.S.
[34] A list of Final Rules adopted as of December 31, 2016, that affect FMCSA rules and regulations are available on the FMCSA website, *Rulemaking Documents, available at* https://www.fmcsa.dot.gov/regulations/search/rulemaking?keyword=&dt=final&topic= (last visited Mar. 13, 2017).
[35] Gross Combination Weight Rating; Definition, 79 Fed. Reg. 15245 (Mar. 19, 2014), *available at* https://www.federalregister.gov/documents/2014/03/19/2014-05502/gross-combination-weight-rating-definition (last visited Mar. 13, 2017).

- Requiring the use of a Unified Registration System to submit required registration and biennial update information to the FMCSA.[36]

However, s. 316.302(1)(e), F.S., is created to delay the requirement for electronic logging devices and hours of service support documents[37] for intrastate motor carriers, not carrying hazardous materials in amounts requiring placarding, until December 31, 2018.

This section amends s. 316.302(1)(d), F.S., to remove an exemption from federal law allowing specified CMVs to obscure certain lighting or reflective devices.

Due to changes in federal law, the section amends s. 316.302(2)(a), F.S., to provide clarity that drivers of intrastate CMVs that are not transporting hazardous materials requiring placarding are exempt from 49 C.F.R. s. 395.3, which provides maximum driving times for property-carrying vehicles. These drivers continue to be subject to the maximum driving times required by state law.

This removes a duplicate penalty for falsifying hours of service records from s. 316.302(2)(c), F.S.

Section 316.302(2)(d), F.S., is amended to provide that to be exempt from being required to maintain records of duty status for short-haul drivers the driver must also return to the work reporting location and be released from work within 12 consecutive hours.

Lastly, the section amends s. 316.302(2)(f), F.S., to remove specified exemptions for drivers transporting petroleum products. The section also removes that these exemptions apply when a CMV has a *declared* gross vehicle weight of less than 26,001 pounds. This criterion is changed to CMVs having a *gross vehicle weight*, *gross vehicle weight rating*, *and gross combined weight rating* of less than 26,001 pounds.

Commercial Motor Vehicle Operator Disqualifications (Sections 5 and 38)

Present Situation

Federal and state laws prohibit drivers of commercial motor vehicles from texting while driving a commercial motor vehicle (CMV) and from using a hand-held mobile telephone while driving a CMV.[38] Section 316.3025, F.S., provides that a driver who violates these laws may be assessed a civil penalty of:

- $500 for the first violation;
- $1,000 and a 60-day CDL disqualification for a second violation; and
- $2,750 and a 120-day CDL disqualification for a third and subsequent violation.

[36] Unified Registration System, 78 Fed. Reg. 52607 (Aug. 23, 2013), *available at* https://www.federalregister.gov/documents/2013/08/23/2013-20446/unified-registration-system (last visited Mar. 13, 2017). However, the system is currently delayed until all necessary data is transferred to the new database and that is compatible with State partners. See 82 Fed. Reg. 5292.

[37] Electronic Logging Devices and Hours of Service Supporting Documents, 80 Fed. Reg. 78291 (Dec. 16, 2015), *available at* https://www.federalregister.gov/documents/2015/12/16/2015-31336/electronic-logging-devices-and-hours-of-service-supporting-documents (last visited Mar. 6, 2017).

[38] See 49 C.F.R. ss. 392.80 and 392.82, and s. 316.3025, F.S.

However, federal law requires the 60 and 120-day CDL disqualification for these offenses to be assessed for any combination of certain serious traffic violations during a 3-year period. Specifically, federal law requires, for offenses occurring within a 3-year period while operating a CMV, a 60-day CDL disqualification for a second conviction and a 120-day CDL disqualification for a third or subsequent conviction of any combination of the following offenses[39]:

- Excessive speeding (15 mph or more over the posted speed limit);
- Reckless driving;
- Improper lane changes;
- Following too closely;
- A violation of any state or local law relating to motor vehicle traffic control arising in connection with a fatal accident;
- Driving a CMV:
  - Without obtaining a CDL;
  - Without a CDL in the driver's possession;
  - Without the proper class of CDL or endorsements required;
- Violating a state or local law or ordinance on motor vehicle traffic control prohibiting:
  - Texting while driving a CMV; or
  - Use of a hand-held mobile telephone while driving a CMV.

With the exception of texting while driving a CMV and the use of a hand-held mobile phone while driving a CMV, the above penalties and offenses are in state law.[40] To align with federal law, these two offenses need to be added to the list of disqualifying offenses in s. 316.3025, F.S. According to the DHSMV, non-compliance could result in a loss of federal highway funds.[41]

Effect of Proposed Changes

Sections 5 and 38 amend ss. 316.3025 and 322.61, F.S., respectively, to remove the commercial driver license disqualification penalty for texting while driving a CMV and using a hand-held mobile telephone while driving a CMV from s. 316.3025, and adds those offenses to the list of serious disqualifying offenses while operating a commercial motor vehicle listed in s. 322.61, F.S. This change aligns Florida law with federal regulations.

Autonomous Vehicle Operation (Section 7)

Present Situation

Section 316.003(2), F.S., defines "autonomous vehicle" as any vehicle equipped with autonomous technology. That subsection also includes a definition of "autonomous technology," which means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed *without the active control or monitoring by a human*

[39] 49 C.F.R. s. 383.51 (2015), *Table 2, available at* https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-subtitleB-chapIII-subchapB.pdf at p. 206-207 (last visited Feb 9, 2017).
[40] See s. 322.61(1), F.S.
[41] Meeting with the DHSMV and Senate Transportation Committee Staff (Jan. 23, 2017).

operator.[42] If a vehicle is equipped with technology that requires active control or monitoring by a human operator, that vehicle does not meet the definition of "autonomous vehicle" under Florida law.

Section 316.85, F.S., authorizes a person who possesses a valid driver license to operate an autonomous vehicle in autonomous mode on roads in this state if the vehicle is equipped with autonomous technology as defined in s. 316.003(2), F.S. A person is deemed the operator of an autonomous vehicle operating in autonomous mode when the person causes the vehicle's autonomous technology to engage, regardless of whether the person is physically present in the vehicle while the vehicle is operating in autonomous mode. Thus, under Florida law, an autonomous vehicle may be operated in autonomous mode even if a person is not physically present in the vehicle.

Section 319.145, F.S., requires autonomous vehicles registered in this state to:

- Have a system to safely alert the operator if an autonomous technology failure is detected while the technology is engaged. When an alert is given, the *system* must:
  - Require the operator to take control of the autonomous vehicle; or
  - If the operator does not, or is not able to, take control of the autonomous vehicle, be capable of bringing the vehicle to a complete stop.
- Have a means inside the vehicle to visually indicate when the vehicle is operating in autonomous mode; and
- Be capable of being operated in compliance with the applicable traffic and motor vehicle laws of this state.

Effect of Proposed Changes

Section 7 amends s. 316.85, F.S., to allow a person who does not possess a valid driver license to engage autonomous technology to operate an autonomous vehicle in autonomous mode only if the person inside the vehicle cannot take control of the vehicle's operation or disengage the autonomous technology.

Autonomous Vehicles/Transportation Network Companies/Insurance (Section 8)

Present Situation

Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, email, and text messages. Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as "transportation network companies" (TNCs), rather than as vehicles for hire.

TNCs use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept

[42] The latter definition does not include a motor vehicle enabled with active safety systems or driver assistance systems, including, without limitation, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warning, or traffic jam and queuing assistant, unless any such system alone or in combination with other systems enables the vehicle on which the technology is installed *to drive without the active control or monitoring by a human operator.*

passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and drives to pick up the passenger. Once at the destination, payment is made through the phone application.

Drivers generally use their personal vehicles, and personal automobile insurance policies may contain a "livery" exclusion that excludes coverage if the vehicle is carrying passengers for hire.[43] Consequently, personal automobile insurance policies may not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is transporting passengers, but such insurance is not required. This could lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage. In contrast, taxis and limousines must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, up to $250,000 per incident for bodily injury, and $50,000 for property damage.[44]

Issues relating to insurance coverage for TNCs, and other TNC-related matters, have been under review by the Florida Legislature in recent years. The Florida Senate is currently considering legislation that would create uniform statewide minimum insurance requirements for TNCs and TNC drivers. Generally, when a TNC driver is logged onto the digital network[45] but not engaged in a prearranged ride,[46] the legislation requires:

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;
- Personal Injury Protection (PIP) benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405, F.S.;[47] and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.[48]

When a TNC driver is engaged in a prearranged ride, the following insurance requirements apply:

- Primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine[49] under ss. 627.730-627.7405, F.S.; and

[43] The exclusion in Florida law is mentioned in s. 627.041(8), F.S.
[44] Section 324.032(1)(a), F.S.
[45] CS/CS/SB 340 currently defines "digital network" to mean any online-enabled technology application service, website, or system offered or used by a TNC that enables the prearrangement of rides with TNC drivers.
[46] CS/CS/SB 340 currently defines "prearranged ride" to mean the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a TNC, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle.
[47] These provisions, known as the No-Fault Law, require coverage for PIP to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits.
[48] Section 627.727(1), F.S., requires uninsured motorist vehicle coverage if a policy provides bodily injury coverage unless it is specifically rejected.
[49] Although the legislation currently requires PIP coverage at the same amounts required of limousines, limousines are excluded from PIP requirements under s 627.733(1)(a), F.S. Thus, the effect of this provision should it remain in the TNC

- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.[50]

Interest in the use of autonomous vehicles in ridesharing services is increasing, including with respect to fully autonomous vehicles that do not require drivers. General Motors reportedly paid $500 million for a stake and strategic alliance in Lyft to develop the use of autonomous vehicles in ridesharing and recently spent $1 billion to buy a technology company that has self-driving cars on roads in California.[51] Current Florida law does not specifically address insurance requirements for autonomous vehicles, or for autonomous vehicles used by TNCs.

Effect of Proposed Changes:

Section 8 of the bill creates s. 316.851, F.S., effective on the same date that the TNC legislation currently under consideration, or similar legislation, takes effect, if such legislation is enacted in the 2017 Regular Session or in any extension thereof. In that case, the bill would require an autonomous vehicle used by a TNC *to provide a prearranged ride* to be covered by automobile insurance as required by s. 627.748, F.S., created in that TNC legislation, regardless of whether a human operator is physically present in the vehicle when the ride occurs. As the legislation currently stands, the required coverage would be primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage, and uninsured and underinsured vehicle coverage as required by s. 627.727, F.S. The coverage ultimately specified in that legislation, if enacted, would be required coverage for an autonomous vehicle used by a TNC to provide prearranged transportation, regardless of the presence or absence of a human driver.

- The bill further requires an autonomous vehicle logged on to a digital network but not engaged in a prearranged ride to maintain insurance coverage as defined in s. 627.748(7)(b), F.S. As the TNC legislation currently stands, subsection (7)(b) requires during the identified period of time:
  - Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;
  - PIP benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405, F.S.;[52] and
  - Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.

The bill also requires an autonomous vehicle used to provide a transportation service to carry in the vehicle proof of the required coverage at all times while operating in autonomous mode.

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legislation and be enacted would require no PIP coverage when an autonomous vehicle is engaged in a prearranged ride, regardless of whether a human operator is physically present in the vehicle when the ride occurs.

[50] *See* the CS/CS/SB 340 staff analysis for additional information and details of the legislation, *available at* http://www.flsenate.gov/Session/Bill/2017/340/Analyses/2017s00340.rc.PDF. (last visited April 19, 2017.)

[51] *See* The Ford Motor Company, *Ford Targets Fully Autonomous Vehicle for RideSharing in 2021; Invests in New Tech Companies, Doubles Silicon Valley Team* (Aug. 16, 2016), *available at* https://media.ford.com/content/fordmedia/fna/us/en/news/2016/08/16/ford-targets-fully-autonomous-vehicle-for-ride-sharing-in-2021.html (last visited April 19, 2017.)

[52] These provisions, known as the No-Fault Law, require coverage for personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits.

Dori Slosberg Driver Education Safety Act (Section 9)

Present Situation

Section 318.1215, F.S., the Dori Slosberg Driver Education Safety Act, allows a board of county commissioners to require, by ordinance, that the clerk of court collect an additional $5 with each civil traffic penalty, which shall be used to fund driver education programs in schools. The funds are required to be used for direct educational expenses, and a minimum of 30 percent of the student's time in the program be behind-the-wheel-training.

According to the Dori Saves Lives non-profit, more than 60 counties in Florida require the additional $5 with each civil traffic penalty, bringing in approximately $15 million each year to fund driver education programs in Florida schools.[53]

Effect of Proposed Changes

Section 9 amends s. 318.1215, F.S., to provide that a board of county commissioners may require, by ordinance, that the clerk of court collect an additional $5 with each *criminal*, instead of *civil* traffic penalty, which is used to fund driver education programs in schools. This change will likely reduce the amount of such funds collected.

Work Zones (Sections 10 and 46)

Present Situation

Section 318.18, F.S., provides that a person cited for exceeding the speed limit in a posted construction zone, must pay double the fine for exceeding the speed limit. The posting must include notification of the speed limit and the doubling of fines. Fines are doubled only if construction personnel are present or operating equipment on the road or immediately adjacent to the road under construction. Fines for unlawful speed are:

For speed exceeding the limit by:	*Fine:*
1-5 m.p.h.	Warning
6-9 m.p.h.	$25
10-14 m.p.h.	$100
15-19 m.p.h.	$150
20-29 m.p.h.	$175
30 m.p.h. and above	$250

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The term construction zone is not defined in Florida Statutes; however, s. 316.003(97), F.S., defines "work zone" as the area and its approaches on any state-maintained highway, county maintained highway, or municipal street where construction, repair, maintenance, or other street-related or highway-related work is being performed or where one or more lanes are closed to traffic.

[53] Dori Saves Lives, *Teen Driver Education Teachers*, http://dorisaveslives.org/driver-education-teachers/ (last visited April 19, 2017).

Effect of Proposed Changes

Section 10 amends s. 318.18(3)(d), F.S., to change the term "construction zone" to "work zone." Persons cited for exceeding the speed limit in a posted work zone must pay double the fine for unlawful speed.

Section 42 provides that this amendment applies upon the adoption by rule of uniform traffic citation forms. The DHSMV shall notify the Division of Law Revision and Information upon the adoption of such forms.

International Registration Plan – Charter Buses (Section 11)

Present Situation

The International Registration Plan (IRP) is a registration reciprocity agreement among all states in the contiguous United States, the District of Columbia, and several Canadian provinces. It provides for the payment of license fees based on fleet operation in various member jurisdictions.[54] This allows carriers to operate inter-jurisdictionally while only needing to register its vehicles in its base jurisdiction, which is the state or province where the registrant has an established place of business[55].

All apportionable vehicles domiciled in the state are required to be registered in accordance with the IRP and display "Apportioned" license plates.[56] Motor carriers registered under the IRP are also required to maintain specified records for the DHSMV, and may have their registrations and license plates withheld if:[57]

- An identifying number issued by the federal agency responsible for motor carrier safety is not provided for the motor carrier and entity responsible for motor carrier safety for each motor vehicle; or
- A motor carrier or vehicle owner has been prohibited from operating by a federal or state agency responsible for motor carrier safety.

Additionally, the DHSMV has authority to suspend, with notice, any commercial motor vehicle or license plate issued to a motor carrier or vehicle owner who has been prohibited from operating by a federal or state agency responsible for motor carrier safety.[58] Apportionable vehicles that do not regularly operate in a particular jurisdiction also have the option to register for trip permits in order to operate in IRP member jurisdictions for limited periods where they do not pay license taxes.[59]

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[54] International Registration Plan, Inc., *About IRP*, http://www.irponline.org/?page=AboutIRP (last visited Feb. 1, 2017).
[55] As defined by the IRP, (January 2017) *available at* http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/publications/IRP_agreement_eff_january_1_.pdf at p. 16 (last visited Feb. 1, 2017).
[56] Section 320.0715(1), F.S.
[57] Section 320.0715(4), F.S.
[58] Section 320.0715(4)(c), F.S.
[59] *See* IRP, Inc., *Trip Permits- Cost/Duration* (May 2016), *available at* http://www.irponline.org/resource/resmgr/Jurisdiction_Info_2/Trip_Permits_5.19.2016.xlsx (last visited Feb. 6, 2017).

The IRP defines an apportionable vehicle as:[60]

> [A]ny Power Unit that is used or intended for use in two or more Member Jurisdictions and that is used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property, and:
> (i) Has two Axles and a gross Vehicle weight or registered gross Vehicle weight in excess of 26,000 pounds, or
> (ii) Has three or more Axles, regardless of weight, or
> (iii) Is used in combination, when the gross Vehicle weight of such combination exceeds 26,000 pounds.

The definition excludes a recreational vehicle, a vehicle displaying restricted plates, or a government-owned vehicle. However, those excluded vehicles may choose to register under the IRP.

Prior to January 1, 2016, charter buses were also excluded from having to register under the IRP, but retained the option to do so. The IRP was amended to remove charter buses from the exemption, requiring charter bus operations to register under the IRP. This registration ensures that charter bus operations will pay license fees to each jurisdiction it operates in, and prevents or suspends the registration of unsafe carriers.[61] As of January 1, 2016, the DHSMV estimates that less than 200 charter bus carriers or companies within the state were required to register under the IRP in order for the state to remain compliant with the reciprocity agreement.[62]

Effect of Proposed Changes

Section 11 amends s. 320.01, F.S., to remove charter buses from the apportionable vehicle exclusion. This change is necessary to align with the requirements of the IRP. All charter buses operating interstate are now required to obtain an IRP registration or purchase trip permits.

Prevent Blindness Florida Organization Name Change (Sections 12, 21 and 32)

Present Situation

In May of 2016, the organization Prevent Blindness Florida changed their name to Preserve Vision Florida.[63]

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[60] International Registration Plan (Jan. 2017), *available at* http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/publications/IRP_agreement_eff_january_1_.pdf at p. 12-13 (last visited Feb. 2, 2017).
[61] *See* IRP, Inc., *Official Amendment to the International Registration Plan* (June 2014) http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/irp_ballots/ballot_391.pdf (last visited Feb. 3, 2017).
[62] Email from the DHSMV (Feb. 17, 2017) (on file with the Senate Committee on Transportation).
[63] Department of State, Division of Corporations – Sunbiz.org, *Preserve Vision Florida, Inc.* (May 4, 2016), http://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2016%5C0509%5C84865905.Tif&documentNumber=706503 (last visited Mar. 22, 2017).

Effect of Proposed Changes

Sections 12, 12 and 32 amend ss. 320.02, 320.08068 and 322.08, F.S., respectively, pertaining to the DHSMV to recognize the organization's name change.

Tax Collector Services and Fee Distributions (Sections 13, 34, 35 and 37)

Present Situation

In 2010, the Florida Legislature required all state driver license issuance services be transferred to tax collectors who are constitutional officers under s. 1(d), Art. VIII of the State Constitution by June 30, 2015.[64] As part of that transfer, tax collectors retain portions of specified fees when processing certain driver license services. Additionally, tax collectors charge a $6.25 service fee for completing such services.[65] However, some tax collectors refuse to offer such services to out-of-county Florida residents.

Tax collectors are not currently able to retain portions of fees for some services that the tax collectors are regularly performing. For example, an applicant who fails an initial driving knowledge or skills test is required to pay a $10 or $20 fee, respectively, to be issued a subsequent test. These fees are deposited into the Highway Safety Operating Trust Fund (HSOTF), regardless of whether the DHSMV or the tax collectors administered the exam.[66]

Similarly, service fees for license reinstatements collected pursuant to s. 322.21(8), F.S., are deposited into the General Revenue Fund and HSOTF, regardless of whether the reinstatement was conducted by the DHSMV or tax collectors. Of the $45 service fee to reinstate a driver license suspension, $15 is deposited in the General Revenue Fund and $30 in the HSOTF. Of the $75 service fee to reinstate a driver license revocation or CDL disqualification, $35 is deposited in the General Revenue Fund and $40 in the HSOTF.

Effect of Proposed Changes

Sections 13 and 35 amend ss. 320.03 and 322.135, F.S., respectively, to require each tax collector to provide the same motor vehicle registration and driver license services to residents of other counties as it does to residents of its home county.

Sections 34 and 37 amend ss. 322.12 and 322.21, F.S., respectively, to require, for subsequent driver license initial knowledge and skills tests, that the tax collector retain the $10 or $20 fee, less an eight percent General Revenue Service Charge[67], for administering tests to applicants. The bill also requires the tax collectors to retain a portion of service fees when processing driver license reinstatements. If the reinstatement is processed by the tax collector:

- Of the $45 fee for suspension reinstatement, $15 shall be retained by the tax collector, less an eight percent General Revenue Service Charge, and $15 shall be deposited into the HSOTF; and

[64] Chapter 2010-163, Laws of Florida and s. 322.02(1), F.S.
[65] Section 322.135(1)(c), F.S.
[66] Section 322.12(1), F.S.
[67] Set forth in s. 215.20, F.S.

- Of the $75 fee for revocation or disqualification reinstatement, $20 shall be retained by the tax collector, less an eight percent General Revenue Service Charge, $20 shall be deposited into the HSOTF, and $35 shall be deposited into the General Revenue Fund.

DHSMV's Electronic Filing System (Section 14)

Present Situation

Section 320.03, F.S., provides the duties of tax collectors as it relates to motor vehicle licensing. It provides that jurisdiction over the electronic filing system (EFS) for use by authorized EFS agents for certain purposes is expressly preempted to the state, and DHSMV has regulatory authority over the system. Specifically, the EFS is used to:

- Electronically title or register motor vehicles, vessels, mobile homes, or off-highway vehicles;
- Issue or transfer registration license plates or decals;
- Electronically transfer fees due for the title and registration process; and
- Perform inquiries for title, registration, and lienholder verification and certification of service providers.

The section provides that an entity that, in the normal course of its business, sells products that must be titled or registered, provides title and registration services on behalf of its consumers, *and* meets the requirements established by the DHSMV shall not be precluded from participating in the EFS upon request from the qualified entity.[68] The EFS must be available for use statewide and applied uniformly throughout the state. Additionally, the EFS agents may charge a fee to the customer for use of the EFS.

The EFS is primarily used by Florida's motor vehicle dealers to acquire access to DHSMV registration and title information, and to process title and registration transactions.[69]

Effect of Proposed Changes

Section 14 amends s. 320.03(10), F.S., to provide that effective July 1, 2018, the EFS system can be used to process title transactions, derelict motor vehicle certificates, and certificates of destruction for derelict and salvage motor vehicles. The bill adds that an entity that, in the normal course of its business, processes title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict or salvage motor vehicles and meets the requirements established by the DHSMV may be an authorized EFS agent.

The section also reauthorizes DHSMV to adopt rules to administer the section, including, but not limited to, rules establishing participation requirements, certification of service providers, EFS requirements, disclosures, and enforcement authority for noncompliance.

[68] Fla. Admin. Code R. 15C-16.010 provides DHSMV's requirements to be an EFS agent.
[69] For more information, see DHSMV website, *Electronic Filing System (EFS)*, https://www.flhsmv.gov/motor-vehicles-tags-titles/electronic-lien-titles/electronic-filing-system-efs/ (last visited April 19, 2017).

Issuance of Apportionable Vehicle Plates (Sections 15 and 17)

Present Situation

Registration license plates, which bear a graphic symbol and alphanumeric system of identification, are issued for a 10-year period. However, "Apportioned" license plates issued to vehicles registered under the International Registration Plan (IRP), are issued annually.[70] Each original plate costs $28, which is deposited into the Highway Safety Operating Trust Fund (HSOTF). Apportioned vehicles are also issued an annual cab card that denotes the declared gross vehicle weight for each apportioned jurisdiction where the vehicle is authorized to operate.[71]

Effect of Proposed Changes

Sections 15 and 17 amend ss. 320.06 and 320.0607, F.S., respectively, to provide that beginning October 1, 2018, apportioned vehicles will be issued license plates valid for a 5-year period, instead of annually. If the license plate is damaged or worn prior to the end of the 5-year period, the DHSMV will replace it, upon application and surrender of the current plate, at no charge. Cab cards and validation stickers will continue to be issued annually, and the $28 annual fee will apply to the issuance of an original or renewal validation sticker, instead of for the cost of the plate.

Electronic Rental Agreements (Section 16)

Present Situation

Section 320.0605, F.S., provides that a person who rents or leases a vehicle is required to possess a true copy of rental or lease documentation for the motor vehicle at all times while the vehicle is being operated.[72] The documentation must include the following:

- Date of rental and time of exit from rental facility;
- Rental station identification;
- Rental agreement number;
- Rental vehicle identification number;
- Rental vehicle license plate number and state of registration;
- Vehicle's make, model, and color;
- Vehicle's mileage; and
- Authorized renter's name.

Effect of Proposed Changes

Section 16 amends s. 320.0605, F.S., to authorize a person to possess an *electronic copy* of the rental or lease documentation to be displayed upon the request of a law enforcement officer or an agent of the DHSMV. The bill provides that displaying the electronic copy does not constitute consent for the officer or agent to access any information on the device other than the displayed

[70] Section 320.06(1)(b)1., F.S.
[71] *See* IRP, Inc., *State of Florida Apportioned Cab Card Sample*, http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/cab_cards/fl_cc_sample.pdf (last visited Feb. 8, 2017).
[72] A person who cannot display such documentation upon request from an officer or agent of the DHSMV is guilty of a noncriminal traffic infraction, punishable as a nonmoving violation.

rental or lease documentation. The person who presents the device to the officer assumes liability for any resulting damage to the device.

This section also removes that the rental or lease documentation must include the time of exit from the rental facility.

Agricultural Restricted License Plate (Section 18)

Present Situation

Section 320.08(4)(m), F.S., provides a restricted license plate for a flat fee of $324 available for truck tractors used within a 150-mile radius of its address used for hauling forestry products.

Section 320.08(4)(n), F.S., provides a restricted plate for a flat fee available for truck tractors or heavy trucks, not operated as for-hire vehicles, engaged exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products within a 150-mile radius of its home address. The fee for such plate is:

- $87.75 if such vehicle's declared gross weight is less than 44,000 pounds; or
- $324 if the vehicle's declared gross weight is 44,000 pounds or more and such vehicle only transports from the point of production to the point of primary manufacture; the point of assembly; or to a shipping point.

For these purposes, "not-for-hire" means that the owner of the motor vehicle must also be the owner of the raw, unprocessed, and nonmanufactured agricultural or horticultural product or the user of the farm implements and fertilizer being delivered. The DHSMV may require any documentation deemed necessary to determine eligibility prior to issuance of this license plate.

Effect of Proposed Changes

Section 18 amends s. 320.08, F.S., to revise the eligibility requirement for the agricultural restricted plate by removing the 150-mile radius from its home address requirement. Instead, truck tractors or heavy trucks that operate *within the state* and meet the criteria for the restricted plate are eligible for such plate.

Section 18 also makes cross-reference changes to conform to provisions made by the bill.

Discontinued Specialty License Plates (Sections 19 and 20)

Present Situation

The DHSMV must discontinue the issuance of any approved specialty license plate if the number of valid specialty plate registrations falls below 1,000 plates for at least 12 consecutive months, or discontinue the sale of presale vouchers if the approved plate does not sell at least 1,000 vouchers in 24 months.[73] The specialty license plate must also be discontinued if the organization no longer exists, stops providing services that are authorized to be funded from the annual use fee proceeds, or pursuant to an organizational recipient's request.[74]

[73] Sections 320.08056(8)(a) and 320.08053(1)(b), F.S.; Florida collegiate plates are exempt from these requirements.
[74] Section 320.08056(8)(b), F.S.

The following specialty license plates have been discontinued by the DHSMV:

- The American Red Cross plate for failing to meet sales requirements;[75]
- The Donate Organs Pass It On plate because the organization has closed;[76] and
- The St. Johns River plate and Hispanic Achievers plate for not meeting presale requirements.[77]

Effect of Proposed Changes

Sections 19 and 20 amend ss. 320.08056 and 320.08058, F.S., respectively, to remove the American Red Cross plate, the Donate Organs Pass It On plate, the St. Johns River plate, and the Hispanic Achievers plate from law.

Ancient, Antique Motor, or Historical Motor Vehicles (Section 22)

Present Situation

Section 320.086, F.S., provides that *ancient* motor vehicle is defined as a private-use motor vehicle manufactured in 1945 or earlier. An *antique* motor vehicle is defined as a private-use motor vehicle manufactured after 1945 and of the age of 30 years or more after the date of manufacture. Additionally, the section provides requirements for a motor vehicle to be registered as a historical motor vehicle, and an ancient or antique firefighting apparatus or former military vehicle only used in exhibitions. For purposes of this section, "former military vehicle" includes a trailer.

The owner of such vehicles, upon application to the DHSMV and upon payment of the license tax, will be issued a special license plate for the motor vehicle. For *ancient* motor vehicles, the license plate is valid for use without renewal so long as the vehicle is in existence. Owners of antique and ancient motor vehicles pay a reduced, flat license tax of $7.50.[78]

Effect of Proposed Changes

Section 22 amends s. 320.086, to provide, for purpose of this section, a trailer is considered a motor vehicle. Therefore, if the owner of a trailer qualifies for such license plate upon application to the DHSMV and payment of the license tax, the trailer will be issued the corresponding special license plate.

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[75] DHSMV Technical Advisory RS/TL16-009, *American Red Cross Specialty License Plate* (April 6, 2016), *available at* https://www.flhsmv.gov/dmv/bulletins/2016/ta_rstl16-009.pdf (last visited Mar. 22, 2017).
[76] DHSMV Technical Advisory RS/TL16-019, *Deauthorization of Donate Organs Pass It On Specialty License Plate* (July 15, 2016), *available at* https://www.flhsmv.gov/dmv/bulletins/2016/ta_rstl16-019.pdf (last visited Mar. 22, 2017).
[77] After 24 months in the presale process, the Hispanic Achievers plate had 26 registrations and the St. Johns River plate had 45 registrations. See DHSMV website, *Pre-Sale Specialty License Plate Vouchers* (June 30, 2016), http://www.flhsmv.gov/specialtytags/PreSaleData.html (last visited Mar. 22, 2017).
[78] Section 320.08(2), F.S.

Purple Heart Motorcycle Plate (Section 23)

Present Situation

DHSMV currently offers multiple military special license plates available to certain military service members or veterans, but only offers two military motorcycle special plates: the Disabled Veteran motorcycle plate and the Paralyzed Vets of America motorcycle plate.[79]

Purple Heart Medal

The Purple Heart is one of the oldest and most recognized American military medals, awarded to service members who were killed or wounded by enemy action. The Purple Heart differs from all other decorations in that an individual is not "recommended" for the decoration. Rather, he or she is entitled to it upon meeting specific criteria.[80] The Purple Heart is ranked immediately behind the Bronze Star Medal and ahead of the Defense Meritorious Service Medal[81] in order of precedence.

Effect of Proposed Changes

Section 23 creates s. 320.0875, F.S., to establish a Purple Heart motorcycle special license plate. A Florida resident who owns or leases a motorcycle that is not used for hire or commercial use, and who was awarded a Purple Heart may receive a Purple Heart motorcycle license plate upon:

- Application to the DHSMV;
- Payment of the motorcycle license tax[82]; and
- Documentation acceptable to the DHSMV that he or she is a recipient of the Purple Heart medal.

The Purple Heart motorcycle plate shall be stamped with the words "Combat-wounded Veteran" followed by the serial number, the term "Purple Heart," and the likeness of the Purple Heart medal.

Bronze Star License Plate (Section 24)

Present Situation

Currently, there are 21 special military plates authorized in s. 320.089, F.S., available to military service members or veterans. [83] Special military plates authorized under this section are stamped

[79] For plate samples, see DHSMV, *Military License Plates*, *available at* http://www.flhsmv.gov/specialtytags/miltags.html (last visited Mar. 22, 2017).
[80] Paragraph 1-14(c), Army Regulation 600-8-22.
[81] The Defense Meritorious Service Medal is awarded in the name of the Secretary of Defense to members of the Armed Forces of the United States who, after 3 November 1977, distinguished themselves by noncombat meritorious achievement or service.
[82] Section 320.08(1)(a) and (c), F.S., provide the motorcycles have a flat license tax of $10 plus a $2.50 nonrefundable motorcycle education safety fee.
[83] The 21 military special plates currently offered in s. 320.089, F.S., include plates available for the following types of service: Veteran or Woman Veteran of the U.S. Armed Forces, World War II, Korean War, or Vietnam War Veteran, Navy Submariner, Active or retired National Guard member or U.S. Reservists, Pearl Harbor survivor, recipient of the Combat Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, Air Force Combat Action Medal, Distinguished Flying Cross, or Purple Heart, former Prisoner of War, and service members or veterans of Operation Desert Shield, Desert Storm, Enduring Freedom, and Iraqi Freedom.

with words consistent with the type of special plate issued, and include a likeness of the related campaign medal or badge, if applicable. Applicants for special military license plates authorized under this section are required to pay the annual license tax in s. 320.08, F.S., with the exception of certain disabled veterans who qualify for the Pearl Harbor, Purple Heart, or Prisoner of War plate, to whom such plates are issued at no cost.[84] With the exception of Woman Veteran plates, the first $100,000 of revenue generated annually from the sale of special use military plates is deposited into the Grants and Donations Trust Fund under the Veterans' Nursing Homes of Florida Act, as described in s. 296.38(2), F.S. Additional revenue is deposited into the State Homes for Veterans Trust Fund and used to construct, operate, and maintain domiciliary and nursing homes for veterans.[85] Proceeds from the Woman Veteran plates must be deposited into the Operations and Maintenance Trust Fund administered by the Department of Veterans' Affairs to be used solely for the purpose of creating and implementing programs that benefit women veterans.[86]

Bronze Star Medal

The Bronze Star Medal was established on February 4, 1944, to recognize those who served after December 6, 1941, in any capacity in or with the Armed Forces of the United States or a friendly foreign nation. The Bronze Star Medal is awarded to a person who distinguished himself or herself by heroic or meritorious service, not involving participation in aerial flight, in connection with military operations against an armed enemy; or while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party. Recipients of the Bronze Star Medal must be receiving imminent danger pay while serving in a geographic area authorized for special pay.[87] In order of precedence, the Department of Defense (DoD) places the Bronze Star Medal seventh amongst DoD wide military decorations and awards following the Distinguished Flying Cross and preceding the Purple Heart.[88]

Effect of Proposed Changes

Section 24 creates a special military license plate for recipients of the Bronze Star Medal. The plate will be stamped with the words "Bronze Star" and a likeness of the Bronze Star Medal. To receive a Bronze Star special military license plate, the individual must submit an application for the plate to the DHSMV, provide proof that he or she is a Bronze Star Medal recipient, and pay the appropriate license tax as provided in s. 320.08, F.S. Revenue generated from the sale of the Bronze Star plate is deposited in the Grants and Donations Trust Fund and the State Home for Veterans Trust Fund, both of which are administered by the FDVA.

This section also makes technical changes to s. 320.089, F.S., to provide clarity.

[84] Section 320.089(1)(c) and (2)(a), F.S.
[85] Section 320.089(1)(b), F.S.
[86] Section 320.089(1)(c), F.S.
[87] Department of the Army, *Military* Awards, Army Regulation 600-8-22 (June 25, 2015).
[88] Department of Defense, *Manual of Military Decorations and Awards: DoD Service Awards – Campaign, Expeditionary, and Service Medals*, Manual No. 1348.33, Vol. 2 (May 15, 2015). The order of precedence for military awards varies by branch of service.

Transporter License Plates (Section 25)

Present Situation

Section 320.133, F.S., allows the DHSMV to issue transporter license plates. Transporter plates are available for an applicant who, incidental to the conduct of the applicant's business, engages in the transporting of unregistered motor vehicles, and who pays a license tax and provides proof of liability insurance coverage of at least $100,000. A transporter plate is valid for 1 year, beginning January 1 to December 31, for a flat license tax of $101.25.[89] To apply for a transporter plate, the business applicant certifies he understands the plate may only be used for motor vehicles in possession of the business that are being transported in the course of the business.[90]

Types of businesses that may require the use of transporter plates include:
- Motor vehicle detail shops;
- Van conversion shops or other shops installing specialized equipment on vehicles;
- Businesses that transport mobile homes and recreational vehicles;
- Licensed repossessors; and
- Businesses that deliver unregistered vehicles (Drive away services).

Currently, there are 8,332 transporter license plates issued by the state, and approximately 4,618 businesses and individuals who have these plates issued to them.[91] There is no requirement for the business applying for the plate to prove it is engaged in transporting unregistered vehicles. The DHSMV has discovered businesses are using transporter license plates on company vehicles rather than on vehicles being transported for the business. According to DHSMV, it has little authority under current law to inquire as to whether the license plates are being used appropriately by applicants.[92]

Effect of Proposed Changes

Section 25 makes numerous changes to s. 320.133, F.S., concerning transporter license plates, including defining a "transporter license plate eligible business," requiring additional business information from applicants for transporter licenses, and adding penalties for improper use of transporter license plates.

This section also requires applicants for transporter license plates to provide proof satisfactory to the DHSMV that the business is a "transporter license plate eligible business," which is defined as a business engaged in the limited operation of unregistered motor vehicles or a repossessor who contracts with lending institutions to repossess or recover motor vehicles or mobile homes. Additionally, the application for a transporter license plate must include:
- The legal name of the person or persons applying for the license plate;
- The name of the business, and principal or principals of the business;

[89] Sections 320.08(15) and 320.133(3), F.S.
[90] *See* DHSMV, *Application for Transporter License Plates* (May 2011), *available at* https://www.flhsmv.gov/pdf/forms/83065.pdf (last visited Feb. 10, 2017).
[91] DHSMV, *Legislative Package Talking Points* (Jan. 24, 2017) (on file with the Senate Committee on Transportation).
[92] *Id.*

- A description of the exact physical location of the place of business within the state;
- Proof of a garage liability insurance policy or a business automobile policy in the amount of $100,000;
- Proof that the business is registered with the Division of Corporations of the Department of State to conduct business in the state; and
- A description of the business processes the business conducts that requires a need for a transporter license plate.

The business certificate of insurance must also indicate the number of transporter license plates reported to the insurance company, which will be the maximum number the DHSMV will issue to the applicant. The applicant is required to maintain such coverage for the entire transporter license plate registration period. The applicant is also required to maintain for two years, records of use for each transporter license plate. Such records must be at the business's location and open to inspection by the DHSMV or any law enforcement agency during reasonable business hours.

This section clarifies that the transporter license plate is only valid for use on an unregistered motor vehicle being transported in the course of the transporter's business and cannot be used on any motor vehicle that would require registration by the business. The DHSMV has authority to cancel any transporter license plate.

Finally, the section adds penalties for the improper use of transporter license plates. Specifically:

- A person who sells or unlawfully possesses, distributes, or brokers a transporter license plate to be attached to any vehicle commits a second-degree misdemeanor[93], and the plate is subject to removal;
- A person who fails to maintain true and accurate records of transporter license plate usage commits a second-degree misdemeanor[94], all transporter plates issued to the person may be subject to cancellation, and the person is disqualified from future transporter license plate issuance;
- A person who operates a motor vehicle with a transporter license plate attached who fails to provide the registration issued for the transporter license plate and proof of required insurance commits a second-degree misdemeanor[95], and the plate is subject to removal. This penalty does not apply to a person who contracts with dealers and auctions to transport motor vehicles; and
- A person who *knowingly and willfully* sells or unlawfully possesses, distributes, or brokers a transporter plate to avoid registering a vehicle that requires registration commits a first-degree misdemeanor[96], and all transporter plates issued to the person's business are canceled and must be returned to the DHSMV.

[93] The second-degree misdemeanor is punishable as provided in ss. 775.082 or 775.083, F.S., which is a definite term of imprisonment not exceeding 60 days or a fine of no more than $500.
[94] *Id.*
[95] *Id.*
[96] The first-degree misdemeanor is punishable as provided in ss. 775.82 or 775.083, which is a definite term of imprisonment not exceeding one year or a fine of no more than $1,000.

Motor Vehicle Dealer and Broker Definitions (Section 26)

Present Situation

Section 320.27(1)(c), F.S., defines a "motor vehicle dealer" as any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair vehicles pursuant to an agreement as defined in s. 320.60(1), F.S. A person who buys, sells, offers for sale, displays for sale or deals in three or more motor vehicles in any 12-month period is presumed to be a motor vehicle dealer.

Motor vehicle dealers are required to be licensed by the state to conduct business. To become a licensed motor vehicle dealer, a person or persons must have their business site approved by a Division of Motorist Services Regional Office, and submit an application to the DHSMV with required documentation and fees, which may include:[97]

- An original $25,000 surety bond or a letter of credit;
- A copy of the business location's lease or proof of ownership;
- A copy of the pre-licensing dealer training course completion certificate;
- A garage liability insurance certificate, or a general liability insurance policy coupled with a business automobile policy;
- A copy of registration of business with Florida's Secretary of State, Division of Corporations;
- A copy of specified corporate papers;
- A sales tax number and Federal Employer Identification number; and
- Fingerprints of the applicants to be submitted to the Florida Department of Law Enforcement for state processing, and then forwarded to the Federal Bureau of Investigation for federal processing.

Additionally, motor vehicle dealers are required to follow numerous state laws and procedures in order to maintain their dealer license. Any person who violates these license requirements can be found guilty of a second-degree misdemeanor[98], and could be liable under civil law in violation of Florida's Deceptive and Unfair Trade Practices Act[99].

Section 320.27(1)(d), F.S., defines a "motor vehicle broker" as any person engaged in the business of offering to procure or procuring motor vehicles for the general public, including through solicitation or advertisement, but who does not store, display, or take ownership of any vehicle for the purpose of selling the vehicle.

Motor vehicle brokers are not considered motor vehicle dealers; thus, are not required to be licensed.

[97] *See* s. 320.27, F.S., and DHSMV website, *Licensing Requirements for Motor Vehicle Dealers*, http://www.flhsmv.gov/dmv/dealer.html (last visited April 19, 2017).
[98] Section 320.27(8), F.S.
[99] Part II, ch. 501, F.S.

Effect of Proposed Changes

Section 26 amends the definitions of "motor vehicle dealer" and "motor vehicle broker." Specifically, it adds that the term "motor vehicle dealer" also includes any person:

- Who engages in possessing, storing, or displaying motor vehicles for retail sale;
- Who advertises motor vehicles for retail sale;
- Who negotiates with consumers regarding the terms of sale for a motor vehicle;
- Who provide test drivers of motor vehicles offered for sale; or
- Who deliver or arrange for delivery a motor vehicle in conjunction with the sale of such motor vehicle.

The section clarifies that a person is not a motor vehicle dealer if his or her sole dealing in motor vehicles is owning a publication or hosting a website that displays vehicles for sale by licensed motor vehicle dealers.

This section amends the term "motor vehicle broker," which is defined in the bill as any person engaged in the business of assisting the general public in purchasing or leasing a motor vehicle from a licensed dealer, including through solicitation or advertisement, and is not considered a motor vehicle dealer.

The section adds that any advertisement or solicitation by a motor vehicle broker must include a statement that the broker is receiving a fee and that the person is not a licensed motor vehicle dealer.

FHP Law Enforcement Training Reimbursement (Section 27)

Present Situation

Section 321.25, F.S., authorizes the DHSMV "to provide for the training of law enforcement officials and individuals in matters relating to the duties, functions, and powers of the Florida Highway Patrol…" The DHSMV is authorized to charge a fee for providing authorized training, as well as tuition, lodging, and meals. New FHP troopers receive 28 to 29 weeks of paid Law Enforcement Training at the FHP Training Academy. During this paid training, meals, lodging, equipment, and study materials are provided to FHP Academy trainees at no cost to the trainee.[100] The DHSMV estimates that the cost of training and other course expenses to the DHSMV is approximately $12,386 per trooper trainee.[101]

In Florida, if an officer trainee who attends an approved training program at the expense of an employing agency terminates employment with such agency within two years after graduation from the basic recruit training program, he or she may be required to reimburse the employing agency for the full cost of tuition and other expenses.[102] Section 943.16, F.S., allows an employing agency to institute a civil action to collect these expenses if it is not reimbursed, provided that the trainee signed acknowledgement of this requirement. Trainees are not required to reimburse the employing agency if they resign their law enforcement certification upon

[100] FHP, *Be A Trooper- Requirements- Benefits, available at* http://beatrooper.com/requirements/ (last visited Feb. 10, 2017).
[101] Email from the DHSMV (Feb. 17, 2017) (on file with the Senate Committee on Transportation).
[102] Section 943.16, F.S.

terminating employment. Additionally, an employing agency may waive the reimbursement requirement in part or in full for a trainee who terminates employment due to hardship or extenuating circumstances.[103]

Since 2012, 86 FHP members terminated employment with the FHP within two years of completing training. According to the DHSMV, the FHP only pursues reimbursement if a trooper leaves within the two years to secure employment with another law enforcement agency.[104] An additional 37 FHP members terminated employment within the third year of completing FHP training.

Effect of Proposed Changes

Section 27 amends s. 321.21, F.S., relating specifically to FHP training, to increase the employment period length to which the reimbursement requirement applies from two years to three years. If an FHP trainee terminates employment with FHP prior to completing three years of service, the DHSMV may require the trainee to reimburse the cost of the FHP training tuition and other course expenses.

The amended section retains that the DHSMV may institute a civil action to collect tuition and other related expenses if it is not reimbursed, provided the trainee signed written acknowledgement of the (3-year) requirement. Additionally, the DHSMV retains authority to waive the reimbursement requirement in part or in full if the trainee terminates employment due to hardship or extenuating circumstances. However, the amendment removes the ability of FHP trainees to resign their law enforcement certification upon termination in order to avoid having to reimburse the DHSMV for the cost of tuition and other course expenses.

Digital Driver Licenses (Section 30)

Present Situation

Section 322.032, F.S.,[105] provides for the establishment of a digital proof of driver license. This section requires the DHSMV to begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license. DHSMV is authorized to contract with one or more private entities to develop a digital proof of driver license system.

The digital proof of driver license developed by DHSMV or by an entity contracted by the DHSMV is required to be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license. DHSMV may adopt rules to ensure valid authentication of digital driver licenses by law enforcement.

A person may not be issued a digital proof of driver license until he or she has satisfied all of the requirements of Ch. 322, F.S., for issuance of a physical driver license.

This section also establishes certain penalties for a person who manufacturers or possesses a false digital proof of driver license. Specifically, a person who:

[103] *Id.*
[104] DHSMV, *Legislative Package Talking Points* (Jan. 24, 2017) (on file with the Senate Committee on Transportation).
[105] This section was created in 2014. *See* ch. 2014-216, Laws of Fla.

- Manufactures a false digital proof of driver license commits a felony of the third degree, punishable by up to five years in prison[106] and a fine not to exceed $5,000.[107]
- Possesses a false digital proof of driver license commits a misdemeanor of the second degree, punishable by up to 60 days in prison.[108]

Agency for State Technology

The Florida Legislature created the Agency for State Technology in 2014 to develop and publish state information technology policy, oversee state technology projects, and manage the State Data Center.[109]

Effect of Proposed Changes

Section 30 amends s. 322.032, to require the DHSMV to collaborate with the Agency for State Technology to *establish and implement* secure and uniform protocols and standards for issuing an optional digital proof of driver license.

This section requires DHSMV to procure any application programming interface necessary to enable a private entity to securely manufacture a digital proof of driver license.

The bill also provides that displaying the digital proof of driver license does not constitute consent for the officer or agent to access any information on the device other than the digital proof of driver license. The person who presents the device to the officer assumes liability for any resulting damage to the device.

"D" Designation on ID card for Persons with PTSD or TBI (Section 31)

Present Situation

DHSMV may issue an identification card to any person who is 5 years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit[110] upon completion of an application and payment of a $25 fee.[111]

Section 320.051(8)(e), F.S., provides that upon request by a person who has a developmental disability, or by a parent or guardian of a child or ward who has a developmental disability, DHSMV issue an identification card exhibiting a capital "D" for the person, child, or ward if the person or the parent or guardian of the child or ward submits:

- Payment of an additional $1 fee; and
- Proof acceptable to DHSMV of a diagnosis by a licensed physician of a developmental disability.[112]

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[106] Section 775.082, F.S.,
[107] Section 775.083, F.S.
[108] Section 775.082, F.S.
[109] See Agency for State Technology, http://www.ast.myflorida.com/ (last visited April 19, 2017).
[110] Disabled parking permits are provided under s. 320.0848, F.S.
[111] Section 322.051, F.S.
[112] Section 393.063(12), F.S., defines "developmental disability" as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that

The above provision applies upon implementation of new designs for the driver license and identification card by the DHSMV.[113]

Effect of Proposed Changes

Section 31 amends s. 322.051(8)(e)1., F.S., adding persons with post-traumatic stress disorder (PTSD)[114] or traumatic brain injury (TBI)[115] to those individuals who may receive the "D" designation on his or her identification card. This also applies to a parent or guardian's request for a child or ward.

Truancy Reporting (Section 33)

Present Situation

A minor is not eligible for driving privileges unless he or she[116]:

- Is enrolled in a public school, nonpublic school, or home education and satisfies relevant attendance requirements;
- Has received a high school diploma, a high school equivalency diploma, a special diploma, or a certificate of high school completion;
- Is enrolled in a study course in preparation for the high school equivalency examination and satisfies relevant attendance requirements; or
- Has been issued a certificate of exemption or hardship waiver under.

Subsection 322.091(5), F.S., requires the DHSMV to submit a report quarterly to each school district containing the legal name, sex, date of birth, and social security number of each student whose driving privileges have been suspended under this section.

Effect of Proposed Changes

Section 33 amends subsection 322.091(5), F.S., to remove obsolete language. According to the DHSMV, access to this report is available to school boards electronically on an accessible website.[117] The report via the website is updated in real-time whenever a new student is added.

manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

[113] Section 3 of Ch. 2016-175, L.O.F.

[114] PTSD is defined as a mental health condition that is triggered by a terrifying event. Symptoms include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event. See Mayo Clinic website, http://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/home/ovc-20308548 (last visited Mar. 23, 2017).

[115] TBI occurs when an external mechanical force causes brain dysfunction; usually from a violent blow or jolt to the head or body. See Mayo Clinic website, http://www.mayoclinic.org/diseases-conditions/traumatic-brain-injury/basics/definition/con-20029302 (last visited Mar. 23, 2017).

[116] Section 322.091, F.S.

[117] Meeting with the DHSMV and Senate Transportation Committee Staff (Jan. 23, 2017).

Stolen Identification Cards (Section 36)

Present Situation

Section 322.17, F.S., provides that in the event that an instruction permit or driver license is stolen from an individual, upon proof of identity and proof satisfactory to the DHSMV that such permit or license was stolen (generally, with copy of a police report), a replacement permit or license will be issued at no cost to the individual.

Replacement driver licenses and identification cards cost $25. According to the DHSMV, in Fiscal Year 2015-2016, individuals reported approximately 7,123 stolen identification cards to the DHSMV.[118]

Effect of Proposed Changes

Section 36 amends s. 322.17, F.S., to include that identification cards shall be replaced at no cost to an individual who provides proof of identity and proof satisfactory to the DHSMV that the card was stolen.

Specialty Driver License or Identification Cards (Section 37)

Present Situation

Section 322.1415, F.S., provided authority for DHSMV to issue specialty driver licenses and identification cards recognizing, at a minimum, Florida universities, Florida professional sports teams, and all branches of the United States Armed Forces. Additionally, s. 322.1415(5), F.S. provided that the section was repealed effective August 31, 2016.

The DHSMV is not currently authorized to offer expedited shipping services for renewal or replacement driver licenses or identification cards. The fastest way to receive a renewal or replacement driver license or identification card is to go in-person to a Florida driver license office. However, for individuals out-of-state or who cannot get to a driver license office, renewals and replacement driver licenses or identification cards may be requested using a convenience service[119], including the DHSMV's virtual office[120].

According to the DHSMV, it can take seven to fourteen days to receive a renewal or replacement driver license or identification card after it is ordered from the DHSMV's virtual office.

Effect of Proposed Changes

Section 37 amends s. 322.21, F.S., to remove an obsolete reference to specialty driver license and identification card costs from s. 322.21, F.S.

This section also provides that an applicant for a renewal or replacement driver license or identification card, when using a convenience service, will have the option to request expedited

[118] DHSMV, *Legislative Package Talking Points* (Jan. 24, 2017) (on file with the Senate Committee on Transportation).
[119] Section 322.01(10), F.S., defines "convenience service" as "any means whereby an individual conducts a transaction with the department other than in person."
[120] Available at https://services.flhsmv.gov/virtualoffice/Lobby.aspx (last visited Feb. 13, 2017).

shipping. If the applicant chooses expedited shipping, the DHSMV shall issue the license or identification card within five working days of receiving the application and will ship the license or card using an expedited mail service. The DHSMV may charge a fee for the expedited shipping that does not exceed the cost of the expedited mail service. This shipping fee is in addition to any fee that would have been charged for the license or card, excluding the expedited shipping. The DHSMV shall deposit expedited shipping fees into the Highway Safety Operating Trust Fund.

For-hire Passenger Transportation - Financial Responsibility (Section 39)

Present Situation

Section 324.031, F.S., provides that the owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy, which policy is issued by an insurance carrier that is a member of the Florida Insurance Guaranty Association.[121]

The operator or owner of any other vehicle may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy, furnishing a certificate of self-insurance showing a deposit of cash, or furnishing a certificate of self-insurance issued by the DHSMV. However, any person, including a firm, partnership, association, corporation, or other person, other than a natural person, proving financial responsibility by certificate of self-insurance showing a deposit of cash must have a deposit equal to the number of vehicles owned times $30,000, to a maximum of $120,000. In addition, such person must maintain insurance providing excess coverage of minimum limits of $125,000/$250,000/$50,000 or $300,000 combined single limits.

Effect of Proposed Changes

Section 39 amends s. 324.031, F.S., providing that a for-hire passenger transportation vehicle's motor vehicle liability policy must be provided by an insurer authorized to do business in this state and who is a member of the Florida Insurance Guaranty Association, or by eligible surplus lines insurer that has a superior, excellent, exceptional or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation of the Financial Services Commission.

The section also changes the excess minimum insurance limits required for persons proving financial responsibility by certificate of deposit, from $125,000/$250,000/$50,000 to $100,000/$300,000/$50,000.

Unauthorized Interference with Global Positioning Systems (Section 40)

Present Situation

Section 877.27, F.S., prohibits a person from making a radio transmission if he or she is not licensed or exempt for licensure by the Federal Communications Commission, or from causing

[121] The Florida Insurance Guaranty Association is created in s. 631.55, F.S.

an unlicensed radio transmission to interfere with a licensed radio public or commercial radio station. A person who violates this prohibition commits a third degree felony.

Global positioning system (GPS) jammers are devices using radio frequency transmitters in order to intentionally block, jam, or interfere with GPS systems. It is illegal to market, sell, or use GPS jammers in the United States.[122] Such devices have been linked to cargo thefts throughout the United States.[123]

Effect of Proposed Changes

Section 40 amends s. 877.27, F.S., to clearly prohibit a person from using a device prohibited by the Federal Communications Commission that would cause interference with the legal use of a GPS to track vehicles. A person who violates this prohibition commits a third degree felony.

Amending Cross-References (Sections 41-45)

Sections 41-45 amends numerous cross-references to reflect changes made by the bill.

Effective Date (Section 47)

Section 8 takes effect upon the same date that SB 340 or similar legislation takes effect.

Section 10 takes effect upon the adoption by rule of uniform traffic citation forms.

Section 14 takes effect July 1, 2018.

The remaining sections of the bill take effect October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[122] See GPS.gov, *Information About GPS Jamming*, http://www.gps.gov/spectrum/jamming/ (last visited April 19, 2017).
[123] Federal Bureau of Investigation, Private Industry Notification 141002-001, *Cargo Thieves use GPS Jammers to Mask GPS Trackers* (Oct. 2, 2014), *available at* https://info.publicintelligence.net/FBI-CargoThievesGPS.pdf (last visited April 19, 2017).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) reviewed some provisions in the bill on March 10, 2017.[124] The REC estimates that replacing stolen identification cards at no charge to a customer (section 36 of the bill) will reduce revenues deposited into the General Revenue Fund by an insignificant amount until Fiscal Years 2020 through 2022. Beginning 2020, the lost revenues are anticipated to be $100,000 annually.

The REC estimates that allowing local tax collectors to retain fees or portions of fees for administering subsequent driver license examinations or reinstating licenses (sections 34 and 37) will shift approximately $5 million of revenues from the annually to the local tax collectors.

Additionally, the REC estimates that authorizing expedited shipping fees for driver licenses and identification cards (section 11) will have an indeterminate impact in revenues to the extent that expedited shipping is requested.

B. Private Sector Impact:

The bill may have a positive impact for individuals who are:

- Issued a free replacement identification card to replace a stolen card (section 36);
- CMV operators who may replace a damaged apportioned license plate at no charge (sections 15 and 17);
- Not-for-hire truck operators within the state who may become eligible for the restricted agricultural special license plate (section 18);
- Businesses who may become eligible to use DHSMV's electronic filing system (section 14);
- Operators of autocycles (sections 20 and 24) who will not be required to obtain a motorcycle license or endorsement license, or to complete a motorcycle safety course and a motorcycle knowledge and skills test currently required to obtain such a license or endorsement; and

C. Surplus lines insurers (section 39).Government Sector Impact:

The bill makes changes to address compliance issues with federal laws relating to commercial motor vehicles (sections 1, 5, and 27). According to the DHSMV, if Florida fails to comply with FMCSA compatibility requirements, Florida may experience a reduction of up to four percent of Federal-aid highway funds following the first year of noncompliance and up to eight percent for subsequent years.[125] Noncompliance may also affect the potential award of future grants.

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[124] Office of Economic and Demographic Research, Revenue Estimating Conference, *Highway Safety Fees – HB 545* (Mar. 10, 2017), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0310.pdf at p. 22-30 (last visited Mar. 15, 2017).

[125] Email from the DHSMV (Feb. 17, 2017) (on file with the Senate Committee on Transportation).

To the extent that FHP troopers terminate employment for employment with another agency between their second and third year of service, the DHSMV may receive reimbursement for training costs from the individual (section 18). The DHSMV estimates that the cost of training and other course expenses to the DHSMV is approximately $12,386 per trooper trainee.[126]

The DHSMV will likely incur programming costs associated with changes made by the bill, as well as production costs to create Bronze Star license plates (section 24) and Purple Heart motorcycle plates (section 23).), and procurement costs to implement a digital proof of driver license (section 30).

The bill is intended to address a broad range of federal compliance, customer service and administrative efficiency issues; however, these changes have various indeterminate impacts to revenues and expenditures and the total fiscal impact of the bill on the government sector is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.2397, 316.2398, 316.302, 316.3025, 316.614, 316.85, 318.1215, 318.18, 320.01, 320.02, 320.03, 320.06, 320.0605, 320.0607, 320.08, 320.08056, 320.08058, 320.08068, 320.086, 320.089, 320.133, 320.27, 321.25, 322.01, 322.03, 322.032, 322.051, 322.08, 322.091, 322.12, 322.135, 322.17, 322.21, 322.61, 324.031, and 877.27.

This bill creates the following sections of the Florida Statutes: 316.851 and 320.0875.

This bill amends the following sections of the Florida Statutes to conform cross-references: 212.05, 316.303, 316.545, 316.613, and 655.960.

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 18, 2017:
The CS adds the following issues to the bill:

[126] *Id.*

- Allows a person without a driver license to operate an autonomous vehicle in autonomous mode if the person cannot take control of the vehicle;
- Applies certain insurance coverage requirements, should legislation addressing insurance for transportation network companies (TNCs) become law, to autonomous vehicles used by TNCs to provide transportation, regardless of whether a human operator is physically present in the vehicle when the ride occurs;
- Authorizes a board of county commissioners to require, by ordinance, that the clerk of court collect an additional $5 with each *criminal*, instead of *civil* traffic penalty, which is used to fund driver education programs in schools;
- Changes "construction zone" to "work zone" for the purpose of double speeding penalties in such zones if required signs are posted and workers are present;
- Requires tax collectors perform the same motor vehicle registration and driver license services for non-county residents as they do for their home county residents;
- Expands the allowable operations and authorized agents of the DHSMV electronic filing system;
- Revises the eligibility requirement for the agricultural restricted license plate to allow certain agricultural trucks that operate within the state, instead of within a 150-mile radius of the truck's home address, be eligible for the restricted license plate;
- Authorizes a trailer to be considered a motor vehicle for purposes of receiving specified license plates;
- Clarifies the definition of motor vehicle dealers and motor vehicle brokers;
- Requires DHSMV work with the Agency for State Technology to provide digital proof of driver licenses;
- Allows for-hire passenger vehicles be insured by an eligible surplus lines insurer and modifies certain insurance limits; and
- Prohibits a person from using any device prohibited by the Federal Communications Commission that would cause interference with the legal use of a global positioning system to track vehicles.

The CS also:

- Amends the bill to allow the number of warning signals on a volunteer firefighter or medical staff vehicle to be determined by the responding agency;
- Delays the requirements for electronic logging devices and hours of service support documents for certain intrastate motor carriers until December 31, 2018; and
- Provides that tax collectors shall retain subsequent driver examination fees and specified driver license fees, *less the eight percent General Revenue Service Charge*.

CS by Transportation on March 22, 2017:

The CS adds several issues to the bill. Specifically, the CS:

- Creates a definition for an autocycle, requires occupants of autocycles to wear safety belts, and exempts drivers of autocycles from being required to have a motorcycle endorsement or motorcycles license, or from completing motorcycle knowledge and skills testing;
- Allows volunteer firefighters to use red and white, in addition to red, warning signals;

- Allows a person driving a rental vehicle who is stopped by a law enforcement officer or agent of the DHSMV to show an electronic copy of a rental agreement;
- Changes references to the organization "Prevent Blindness" to "Preserve Vision";
- Creates a Purple Heart motorcycle special license plate;
- Creates a Bronze Star license plate;
- Removes specialty license plates from statute that have been discontinued by the DHSMV; and
- Allows a person diagnosed with PTSD or TBI to be eligible to receive a "D" designation on his or her ID card.

The CS modifies changes to the bill sections on the Issuance of Apportionable Vehicle Plates. The CS removes language from current law indicating that the cab card denotes the declared gross vehicle weight *for each jurisdiction in which the vehicle is authorized to operate*. The CS also changes that a $28 annual fee is for an original and a renewed validation sticker, instead of for the annual cab card.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment (with title amendment)

Between lines 287 and 288
insert:

Section 2. Subsection (2) of section 316.193, Florida Statutes, is amended to read:

316.193 Driving under the influence; penalties.—

(2)

(a) Except as provided in paragraph (b), subsection (3), or subsection (4), any person who is convicted of a violation of

subsection (1) shall be punished:

1. By a fine of:

a. Not less than $500 or more than $1,000 for a first conviction.

b. Not less than $1,000 or more than $2,000 for a second conviction; and

2. By imprisonment for:

a. Not more than 6 months for a first conviction.

b. Not more than 9 months for a second conviction.

3. For a second conviction, by mandatory placement for a period of at least 1 year, at the convicted person’s sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.

(b)1. Any person who is convicted of a third violation of this section for an offense that occurs within 10 years after a prior conviction for a violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the court shall order the mandatory placement for a period of not less than 2 years, at the convicted person’s sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not

occur before July 1, 2003.

2. Any person who is convicted of a third violation of this section for an offense that occurs more than 10 years after the date of a prior conviction for a violation of this section shall be punished by a fine of not less than $2,000 or more than $5,000 and by imprisonment for not more than 12 months. In addition, the court shall order the mandatory placement for a period of at least 2 years, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person, when the convicted person qualifies for a permanent or restricted license. The installation of such device may not occur before July 1, 2003.

3. Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior conviction for a violation of this section occurred, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, the fine imposed for such fourth or subsequent violation may be not less than $2,000.

(c) In addition to the penalties in paragraph (a), as a condition of probation, the court may order placement, at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 for at least 6 continuous months upon all vehicles that are ~~individually or jointly leased or owned and~~ routinely operated by the convicted person ~~if, at the time of the offense, the person had a blood-alcohol level or breath-alcohol level of .08~~


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~~or higher~~. If the convicted person is convicted of a first offense misdemeanor of the second degree and has not caused injury to, or the death of, a person or damage to property and such person voluntarily places, or if the court orders placement of, an interlock device under this subsection, the court, upon proper showing that the person has received counseling, treatment, rehabilitation or is enrolled in a substance abuse course pursuant to subsection (5), may withhold adjudication if the person does not have a prior withholding of adjudication or adjudication of guilt for any other offense. Failure of the person to comply with the full terms of the order of placement of the ignition interlock device may result in, among other penalties, the court ordering an adjudication of guilt.

For purposes of this subsection, the term "conviction" means a determination of guilt which is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

Section 3. Subsection (2) of section 316.1937, Florida Statutes, is amended to read:

316.1937 Ignition interlock devices, requiring; unlawful acts.—

(2) If the court imposes the use of an ignition interlock device, the court shall:

(a) Stipulate on the record the requirement for, and the period of, the use of a certified ignition interlock device.

(b) Order that the records of the department reflect such requirement.

(c) Order that an ignition interlock device be installed,

as the court may determine necessary, on any vehicle owned or operated by the person.

(d) If the person claims inability to pay, provide the following discounts on the monthly leasing fee:

1. If a person's family income is at or below 100 percent of the federal poverty level as documented by written order of the court, the regular monthly leasing fee charged to all customers by the interlock provider shall be discounted by 50 percent.

2. If a person's family income is at or below 149 percent of the federal poverty level as documented by written order of the court, the regular monthly leasing fee charged to all customers by the interlock provider shall be discounted by 25 percent.

Persons who qualify for a reduced leasing fee as provided in this paragraph are not required to pay the costs of installation or removal of the device. ~~Determine the person's ability to pay for installation of the device if the person claims inability to pay. If the court determines that the person is unable to pay for installation of the device, the court may order that any portion of a fine paid by the person for a violation of s. 316.193 shall be allocated to defray the costs of installing the device.~~

(e) Require proof of installation of the device and periodic reporting to the department for verification of the operation of the device in the person's vehicle.

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


265394

And the title is amended as follows:

Delete line 5

and insert:

reference; amending s. 316.193, F.S.; authorizing a court to order placement of an ignition interlock device as a condition of probation, subject to certain requirements; authorizing the court to withhold adjudication if a person convicted of a certain offense voluntarily places, or if the court orders placement of, an ignition interlock device, under certain circumstances; providing that failure of the person to comply with the full terms of the order requiring placement of an ignition interlock device may result in the court ordering an adjudication of guilt; defining the term "conviction"; amending s. 316.1937, F.S.; requiring a court that imposes the use of an ignition interlock device to provide certain discounts on the monthly leasing fee for the device, if the person documents that he or she meets certain income requirements; waiving costs associated with installation and removal of the device in certain circumstances; amending ss. 316.2397 and 316.2398, F.S.;

743126

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 421 - 425
and insert:
(e) The requirement for electronic logging devices and hours of service support documents will not go into effect for motor carriers engaged in intrastate commerce until December 31, 2018.

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

743126

And the title is amended as follows:

Delete line 16

and insert:

logging devices and hours of service support documents for intrastate motor carriers;

838110

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 555 and 556
insert:

Section 9. Section 316.87, Florida Statutes, is amended to read:

316.87 Nonemergency medical transportation services.—To ensure the availability of nonemergency medical transportation services throughout the state, a provider licensed by the county or operating under a permit issued by the county may not be

838110

required to use a vehicle that is larger than needed to transport the number of persons being transported or that is inconsistent with the medical condition of the individuals receiving the nonemergency medical transportation services. A licensed basic or advanced life support ambulance service may provide nonemergency medical transportation in permitted ambulances in any county notwithstanding any ordinances relating to certificates of public convenience and necessity or s. 401.25. This section does not apply to the procurement, contracting, or provision of paratransit transportation services, directly or indirectly, by a county or an authority, pursuant to the Americans with Disabilities Act of 1990, as amended.

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

And the title is amended as follows:

Delete line 46

and insert:

times while operating in autonomous mode; amending s. 316.87, F.S.; authorizing a licensed basic or advanced life support ambulance service to provide nonemergency medical transportation in permitted ambulances in any county notwithstanding any ordinances relating to certificates of public convenience and necessity or a specified provision; amending s.

319724

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Brandes) recommended the following:

Senate Substitute for Amendment (838110) (with title amendment)

Between lines 555 and 556
insert:

Section 9. Section 316.87, Florida Statutes, is amended to read:

316.87 Nonemergency medical transportation services.—

(1) To ensure the availability of nonemergency medical transportation services throughout the state, a provider

319724

licensed by the county or operating under a permit issued by the county may not be required to use a vehicle that is larger than needed to transport the number of persons being transported or that is inconsistent with the medical condition of the individuals receiving the nonemergency medical transportation services.

(2) A licensed basic or advanced life support ambulance service may provide nonemergency medical transportation in permitted ambulances in any county notwithstanding any ordinances relating to certificates of public convenience and necessity or s. 401.25. This subsection does not apply to a county located entirely within a designated rural area of opportunity or a county that has a population of more than 2.5 million residents according to the latest state or federal census.

(3) This section does not apply to the procurement, contracting, or provision of paratransit transportation services, directly or indirectly, by a county or an authority, pursuant to the Americans with Disabilities Act of 1990, as amended.

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

And the title is amended as follows:

Delete line 46

and insert:

times while operating in autonomous mode; amending s. 316.87, F.S.; authorizing a licensed basic or advanced life support ambulance service to provide nonemergency medical transportation in permitted ambulances in any

319724

county notwithstanding any ordinances relating to certificates of public convenience and necessity or a specified provision; providing applicability; amending s.

670990

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 1080 and 1081
insert:

Section 19. Effective October 1, 2020, paragraph (a) of subsection (8) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(8)(a) The department must discontinue the issuance of an approved specialty license plate if the number of valid

670990

specialty plate registrations falls below 3,000 ~~1,000 plates~~ for at least 12 consecutive months. A warning letter shall be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 3,000 ~~1,000 plates~~. This paragraph does not apply to collegiate license plates established under s. 320.08058(3), license plates of institutions in and entities of the State University System, specialty license plates that have statutory eligibility limitations for purchase, or Florida Professional Sports Team License plates established under s. 320.08058(9).

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

And the title is amended as follows:

Delete line 101

and insert:

320.08056, F.S.; revising provisions for discontinuing issuance of a specialty plate; providing applicability; deleting the American Red Cross,

254818

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Braynon) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1081 - 1234
and insert:
Section 19. Subsection (2), paragraphs (ee), (eee), (qqq), and (rrr) of subsection (4), and paragraph (a) of subsection (10) of section 320.08056, Florida Statutes, are amended to read:
320.08056 Specialty license plates.—
(2)(a) The department shall issue a specialty license plate

to the owner or lessee of any motor vehicle or a dealer under s. 320.13, except a vehicle registered under the International Registration Plan, a commercial truck required to display two license plates pursuant to s. 320.0706, or a truck tractor, upon request and payment of the appropriate license tax and fees.

(b) A dealer license plate under s. 320.13 may be a specialty license plate. The plate shall be differentiated from other specialty license plates by a decal, developed by the department, located on the upper left corner of the plate which identifies the specialty license plate as a dealer license plate.

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

~~(cc) American Red Cross license plate, $25.~~

~~(ccc) Donate Organs-Pass It On license plate, $25.~~

~~(qqq) St. Johns River license plate, $25.~~

~~(rrr) Hispanic Achievers license plate, $25.~~

(10)(a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1). The fees and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of United States Armed Forces and veterans-related specialty license plates pursuant to paragraphs (4)(d), (bb), (kk), (iii), and (uuu) ~~(ll), (kkk), and (yyy)~~ and s. 320.0891.

Section 20. Subsections (31), (57), (69), and (70) of

section 320.08058, Florida Statutes, are repealed.

Section 21. Paragraph (b) of subsection (4) of section 320.08068, Florida Statutes, is amended to read:

320.08068 Motorcycle specialty license plates.—

(4) A license plate annual use fee of $20 shall be collected for each motorcycle specialty license plate. Annual use fees shall be distributed to The Able Trust as custodial agent. The Able Trust may retain a maximum of 10 percent of the proceeds from the sale of the license plate for administrative costs. The Able Trust shall distribute the remaining funds as follows:

(b) Twenty percent to Preserve Vision ~~Prevent Blindness~~ Florida.

Section 22. Subsection (7) is added to section 320.086, Florida Statutes, to read:

320.086 Ancient or antique motor vehicles; horseless carriage, antique, or historical license plates; former military vehicles.—

(7) For purposes of this section, a trailer is considered a motor vehicle.

Section 23. Section 320.0875, Florida Statutes, is created to read:

320.0875 Purple Heart motorcycle special license plate.—

(1) Upon application to the department and payment of the license tax for the motorcycle as provided in s. 320.08, a resident of this state who owns or leases a motorcycle that is not used for hire or commercial use shall be issued a Purple Heart motorcycle special license plate if he or she provides documentation acceptable to the department that he or she is a

recipient of the Purple Heart medal.

(2) The Purple Heart motorcycle special license plate shall be stamped with the words "Combat-wounded Veteran" followed by the serial number of the license plate. The Purple Heart motorcycle special license plate may have the term "Purple Heart" stamped on the plate and the likeness of the Purple Heart medal appearing on the plate.

Section 24. Paragraph (a) of subsection (1) of section 320.089, Florida Statutes, is amended to read:

320.089 ~~Veterans of the United States Armed Forces; members of National Guard; survivors of Pearl Harbor; Purple Heart medal recipients; active or retired United States Armed Forces reservists; Combat Infantry Badge, Combat Medical Badge, or Combat Action Badge recipients; Combat Action Ribbon recipients; Air Force Combat Action Medal recipients; Distinguished Flying Cross recipients; former prisoners of war; Korean War Veterans; Vietnam War Veterans; Operation Desert Shield Veterans; Operation Desert Storm Veterans; Operation Enduring Freedom Veterans; Operation Iraqi Freedom Veterans; Women Veterans; World War II Veterans; and Navy Submariners;~~ Special license plates for military servicemembers, veterans, and Pearl Harbor survivors~~; fee~~.—

(1)(a) Upon application to the department and payment of the license tax for the vehicle as provided in s. 320.08, a resident of this state who owns or leases ~~Each owner or lessee of~~ an automobile or truck for private use or recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use, shall be issued a license plate pursuant to the following if the applicant provides the

department with proof he or she meets the qualifications listed in this section for the applicable license plate:

1. A person released or discharged from any branch ~~who is a resident of the state and a veteran~~ of the United States Armed Forces shall be issued a license plate stamped with the words "Veteran" or "Woman Veteran" followed by the serial number of the license plate.~~, a Woman Veteran,~~

2. A World War II Veteran shall be issued a license plate stamped with the words "WWII Veteran" followed by the serial number of the license plate.~~,~~

3. A Navy Submariner shall be issued a license plate stamped with the words "Navy Submariner" followed by the serial number of the license plate.~~,~~

4. An active or retired member of the Florida National Guard shall be issued a license plate stamped with the words "National Guard" followed by the serial number of the license plate.

5. A member of the Pearl Harbor Survivors Association or other person on active military duty in Pearl Harbor on December 7, 1941, shall be issued a license plate stamped with the words "Pearl Harbor Survivor" followed by the serial number of the license plate.~~, a survivor of the attack on Pearl Harbor,~~

6. A recipient of the Purple Heart medal shall be issued a license plate stamped with the words "Combat-wounded Veteran" followed by the serial number of the license plate. The Purple Heart plate may have the words "Purple Heart" stamped on the plate and the likeness of the Purple Heart medal appearing on the plate.~~,~~

7. An active or retired member of any branch of the United

States Armed Forces Reserve shall be issued a license plate stamped with the words "U.S. Reserve" followed by the serial number of the license plate.

8. A member of the Combat Infantrymen's Association, Inc., or a recipient of the Combat Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, or Air Force Combat Action Medal shall be issued a license plate stamped with the words "Combat Infantry Badge," "Combat Medical Badge," "Combat Action Badge," "Combat Action Ribbon," or "Air Force Combat Action Medal," as appropriate, and a likeness of the related campaign badge, ribbon, or medal, followed by the serial number of the license plate.

9. A recipient of the~~, or~~ Distinguished Flying Cross shall be issued a license plate stamped with the words "Distinguished Flying Cross" and a likeness of the Distinguished Flying Cross followed by the serial number of the license plate.

10. A recipient of the Bronze Star shall be issued a license plate stamped with the words "Bronze Star" and a likeness of the Bronze Star followed by the serial number of the license plate~~, upon application to the department, accompanied by proof of release or discharge from any branch of the United States Armed Forces, proof of active membership or retired status in the Florida National Guard, proof of membership in the Pearl Harbor Survivors Association or proof of active military duty in Pearl Harbor on December 7, 1941, proof of being a Purple Heart medal recipient, proof of active or retired membership in any branch of the United States Armed Forces Reserve, or proof of membership in the Combat Infantrymen's Association, Inc., proof of being a recipient of the Combat~~

~~Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, Air Force Combat Action Medal, or Distinguished Flying Cross, and upon payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the serial numbers prescribed by s. 320.06, is stamped with the words "Veteran," "Woman Veteran," "WWII Veteran," "Navy Submariner," "National Guard," "Pearl Harbor Survivor," "Combat-wounded veteran," "U.S. Reserve," "Combat Infantry Badge," "Combat Medical Badge," "Combat Action Badge," "Combat Action Ribbon," "Air Force Combat Action Medal," or "Distinguished Flying Cross," as appropriate, and a likeness of the related campaign medal or badge, followed by the serial number of the license plate. Additionally, the Purple Heart plate may have the words "Purple Heart" stamped on the plate and the likeness of the Purple Heart medal appearing on the plate~~.

Section 25. Subsection (4) is added to section 320.13, Florida Statutes, to read:

320.13 Dealer and manufacturer license plates and alternative method of registration.—

(4) A dealer license plate under this section may be a specialty license plate pursuant to s. 320.08056(2). The plate shall be differentiated from other specialty license plates by a decal, developed by the department, located on the upper left corner of the plate which identifies the specialty license plate as a dealer license plate.

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

And the title is amended as follows:

Delete lines 101 - 120

and insert:

320.08056, F.S.; requiring the department to issue a specialty license plate to a certain dealer; authorizing a dealer license plate to be a specialty license plate; requiring the plate to be differentiated from other specialty license plates by a decal, subject to certain requirements; deleting the American Red Cross, Donate Organs-Pass It On, St. Johns River, and Hispanic Achievers license plates; conforming cross-references; repealing s. 320.08058(31), (57), (69), and (70), F.S., relating to the American Red Cross, Donate Organs-Pass It On, St. Johns River, and Hispanic Achievers license plates, respectively; amending s. 320.08068, F.S.; requiring The Able Trust to distribute a specified percentage of annual use fees from motorcycle specialty license plates to Preserve Vision Florida, rather than to Prevent Blindness Florida; amending s. 320.086, F.S.; providing that, for purposes of this section, a trailer is considered a motor vehicle; creating s. 320.0875, F.S.; providing for a motorcycle special license plate to be issued to a recipient of the Purple Heart; providing requirements for the plate; amending s. 320.089, F.S.; providing for a special license plate to be issued to a recipient of the Bronze Star; making technical changes; amending s. 320.13, F.S.; authorizing a dealer license plate to be a specialty license plate; requiring the plate to be

254818

differentiated from other specialty license plates by a decal, subject to certain requirements; amending s.

213662

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Braynon) recommended the following:

Senate Substitute for Amendment (254818) (with title amendment)

Between lines 2069 and 2070
insert:

Section 47. Paragraph (a) of subsection (3) of section 320.06, Florida Statutes, is amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(3)(a) Registration license plates must be made of metal

213662

specially treated with a retroreflection material, as specified by the department. The registration license plate is designed to increase nighttime visibility and legibility and must be at least 6 inches wide and not less than 12 inches in length, unless a plate with reduced dimensions is deemed necessary by the department to accommodate motorcycles, mopeds, or similar smaller vehicles. Validation stickers must also be treated with a retroreflection material, must be of such size as specified by the department, and must adhere to the license plate. The registration license plate must be imprinted with a combination of bold letters and numerals or numerals, not to exceed seven digits, to identify the registration license plate number. The license plate must be imprinted with the word "Florida" at the top and the name of the county in which it is sold, the state motto, or the words "Sunshine State" at the bottom. Apportioned license plates must have the word "Apportioned" at the bottom and license plates issued for vehicles taxed under s. 320.08(3)(d), (4)(m) or (n), (5)(b) or (c), or (14) must have the word "Restricted" at the bottom. License plates issued for vehicles taxed under s. 320.08(12) must be imprinted with the word "Florida" at the top and the word "Dealer" at the bottom unless the license plate is a specialty license plate as authorized in s. 320.08056. Manufacturer license plates issued for vehicles taxed under s. 320.08(12) must be imprinted with the word "Florida" at the top and the word "Manufacturer" at the bottom. License plates issued for vehicles taxed under s. 320.08(5)(d) or (e) must be imprinted with the word "Wrecker" at the bottom. Any county may, upon majority vote of the county commission, elect to have the county name removed from the

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license plates sold in that county. The state motto or the words "Sunshine State" shall be printed in lieu thereof. A license plate issued for a vehicle taxed under s. 320.08(6) may not be assigned a registration license number, or be issued with any other distinctive character or designation, that distinguishes the motor vehicle as a for-hire motor vehicle.

Section 48. Paragraph (b) of subsection (2) of section 320.0657, Florida Statutes, is amended to read:

320.0657 Permanent registration; fleet license plates.—

(2)

(b) The plates, which shall be of a distinctive color, shall have the word "Fleet" appearing at the bottom and the word "Florida" appearing at the top unless the license plate is a specialty license plate as authorized in s. 320.08056. The plates shall conform in all respects to the provisions of this chapter, except as specified herein. For additional fees as set forth in s. 320.08056, fleet companies may purchase specialty license plates in lieu of the standard fleet license plates. Fleet companies shall be responsible for all costs associated with the specialty license plate, including all annual use fees, processing fees, fees associated with switching license plate types, and any other applicable fees.

Section 49. Subsection (12) of section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(2), tri-vehicles as defined in s. 316.003, and mobile homes as defined in s. 320.01, which shall be paid to

213662

and collected by the department or its agent upon the registration or renewal of registration of the following:

(12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised motor vehicle dealer, independent motor vehicle dealer, marine boat trailer dealer, or mobile home dealer and manufacturer license plate: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund. For additional fees as set forth in s. 320.08056, dealers may purchase specialty license plates in lieu of the standard graphic dealer license plates. Dealers shall be responsible for all costs associated with the specialty license plate, including all annual use fees, processing fees, fees associated with switching license plate types, and any other applicable fees.

Section 50. Subsection (2) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(2)(a) The department shall issue a specialty license plate to the owner or lessee of any motor vehicle, except a vehicle registered under the International Registration Plan, a commercial truck required to display two license plates pursuant to s. 320.0706, or a truck tractor, upon request and payment of the appropriate license tax and fees.

(b) The department may authorize dealer and fleet specialty license plates. With the permission of the sponsoring specialty license plate organization, a dealer or fleet company may purchase specialty license plates to be used on dealer and fleet vehicles.

(c) Notwithstanding s. 320.08058, a dealer or fleet specialty license plate shall include the letters “DLR” or “FLT”

213662

on the right side of the license plate. Dealer and fleet specialty license plates must be ordered directly through the department.

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

And the title is amended as follows:

Delete line 253

and insert:

of certain changes made by the act; amending s. 320.06, F.S.; providing an exception to the design of dealer license plates for specialty license plates; amending s. 320.0657, F.S.; providing an exception to the design of fleet license plates for specialty license plates; authorizing fleet companies to purchase specialty license plates in lieu of the standard fleet license plates for additional specified fees; requiring fleet companies to be responsible for all costs associated with the specialty license plate; amending s. 320.08, F.S.; authorizing dealers to purchase specialty license plates in lieu of the standard graphic dealer license plates for additional specified fees; requiring dealers to be responsible for all costs associated with the specialty license plate; amending s. 320.08056, F.S.; allowing the department to authorize dealer and fleet specialty license plates; authorizing a dealer or fleet company to purchase specialty license plates to be used on dealer and fleet vehicles with the permission of the sponsoring specialty license plate organization;

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requiring a dealer or fleet specialty license plate to include specified letters on the right side of the license plate; requiring dealer and fleet specialty license plates to be ordered directly through the department; providing

934212

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1081 - 1103
and insert:
Section 19. Paragraphs (ee), (eee), (qqq), and (rrr) of subsection (4) of section 320.08056, Florida Statutes, are amended, paragraph (bbbb) is added to that subsection, and paragraph (a) of subsection (10) of that section is amended, to read:
320.08056 Specialty license plates.—

934212

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

~~(ee) American Red Cross license plate, $25.~~

~~(eee) Donate Organs-Pass It On license plate, $25.~~

~~(qqq) St. Johns River license plate, $25.~~

~~(rrr) Hispanic Achievers license plate, $25.~~

(bbbb) Ducks Unlimited license plate, $25.

(10)(a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1). The fees and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of United States Armed Forces and veterans-related specialty license plates pursuant to paragraphs (4)(d), (bb), (kk), (iii), and (uuu) ~~(ll), (kkk), and (yyy)~~ and s. 320.0891.

Section 20. Subsections (31), (57), (69), (70), and paragraph (b) of present subsection (80) of section 320.08058, Florida Statutes, are amended, and a new subsection (80) is added to that section, to read:

320.08058 Specialty license plates.—

~~(31) AMERICAN RED CROSS LICENSE PLATES.—~~

~~(a) Notwithstanding the provisions of s. 320.08053, the department shall develop an American Red Cross license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "American Red Cross" must appear at the bottom of the plate.~~

934212

~~(b) The department shall retain all revenues from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, 50 percent of the annual use fees shall be distributed to the American Red Cross Chapter of Central Florida, with statistics on sales of license plates, which are tabulated by county. The American Red Cross Chapter of Central Florida must distribute to each of the chapters in this state the moneys received from sales in the counties covered by the respective chapters, which moneys must be used for education and disaster relief in Florida. Fifty percent of the annual use fees shall be distributed proportionately to the three statewide approved poison control centers for purposes of combating bioterrorism and other poison-related purposes.~~

~~(57) DONATE ORGANS-PASS IT ON LICENSE PLATES.—~~

~~(a) The department shall develop a Donate Organs-Pass It On license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "Donate Organs-Pass It On" must appear at the bottom of the plate.~~

~~(b) The annual use fees shall be distributed to Transplant Foundation, Inc., and shall use up to 10 percent of the proceeds from the annual use fee for marketing and administrative costs that are directly associated with the management and distribution of the proceeds. The remaining proceeds shall be used to provide statewide grants for patient services, including preoperative, rehabilitative, and housing assistance; organ donor education and awareness programs; and statewide medical research.~~

~~(69) ST. JOHNS RIVER LICENSE PLATES.—~~

~~(a) The department shall develop a St. Johns River license plate as provided in this section. The St. Johns River license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "St. Johns River" must appear at the bottom of the plate.~~

~~(b) The requirements of s. 320.08053 must be met prior to the issuance of the plate. Thereafter, the license plate annual use fees shall be distributed to the St. Johns River Alliance, Inc., a s. 501(c)(3) nonprofit organization, which shall administer the fees as follows:~~

~~1. The St. Johns River Alliance, Inc., shall retain the first $60,000 of the annual use fees as direct reimbursement for administrative costs, startup costs, and costs incurred in the development and approval process. Thereafter, up to 10 percent of the annual use fee revenue may be used for administrative costs directly associated with education programs, conservation, research, and grant administration of the organization, and up to 10 percent may be used for promotion and marketing of the specialty license plate.~~

~~2. At least 30 percent of the fees shall be available for competitive grants for targeted community-based or county-based research or projects for which state funding is limited or not currently available. The remaining 50 percent shall be directed toward community outreach and access programs. The competitive grants shall be administered and approved by the board of directors of the St. Johns River Alliance, Inc. A grant advisory committee shall be composed of six members chosen by the St. Johns River Alliance board members.~~

~~3. Any remaining funds shall be distributed with the approval of and accountability to the board of directors of the St. Johns River Alliance, Inc., and shall be used to support activities contributing to education, outreach, and springs conservation.~~

~~4. Effective July 1, 2014, the St. Johns River license plate will shift into the presale voucher phase, as provided in s. 320.08053(2)(b). The St. Johns River Alliance, Inc., shall have 24 months to record a minimum of 1,000 sales of the license plates. Sales include existing active plates and vouchers sold subsequent to July 1, 2014. During the voucher period, new plates may not be issued, but existing plates may be renewed. If, at the conclusion of the 24-month presale period, the requirement of a minimum of 1,000 sales has been met, the department shall resume normal distribution of the St. Johns River specialty plate. If, after 24 months, the minimum of 1,000 sales has not been met, the department shall discontinue the development and issuance of the plate. This subparagraph is repealed June 30, 2016.~~

~~(70) HISPANIC ACHIEVERS LICENSE PLATES.—~~

~~(a) Notwithstanding the requirements of s. 320.08053, the department shall develop a Hispanic Achievers license plate as provided in this section. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Hispanic Achievers" must appear at the bottom of the plate.~~

~~(b) The proceeds from the license plate annual use fee shall be distributed to National Hispanic Corporate Achievers, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal~~

~~Revenue Code, to fund grants to nonprofit organizations to operate programs and provide scholarships and for marketing the Hispanic Achievers license plate. National Hispanic Corporate Achievers, Inc., shall establish a Hispanic Achievers Grant Council that shall provide recommendations for statewide grants from available Hispanic Achievers license plate proceeds to nonprofit organizations for programs and scholarships for Hispanic and minority Floridians. National Hispanic Corporate Achievers, Inc., shall also establish a Hispanic Achievers License Plate Fund. Moneys in the fund shall be used by the grant council as provided in this paragraph. All funds received under this subsection must be used in this state.~~

~~(c) National Hispanic Corporate Achievers, Inc., may retain all proceeds from the annual use fee until documented startup costs for developing and establishing the plate have been recovered. Thereafter, the proceeds from the annual use fee shall be used as follows:~~

~~1. Up to 5 percent of the proceeds may be used for the cost of administration of the Hispanic Achievers License Plate Fund, the Hispanic Achievers Grant Council, and related matters.~~

~~2. Funds may be used as necessary for annual audit or compliance affidavit costs.~~

~~3. Up to 20 percent of the proceeds may be used to market and promote the Hispanic Achievers license plate.~~

~~4. Twenty-five percent of the proceeds shall be used by the Hispanic Corporate Achievers, Inc., located in Seminole County, for grants.~~

~~5. The remaining proceeds shall be available to the Hispanic Achievers Grant Council to award grants for services,~~

934212

~~programs, or scholarships for Hispanic and minority individuals and organizations throughout Florida. All grant recipients must provide to the Hispanic Achievers Grant Council an annual program and financial report regarding the use of grant funds. Such reports must be available to the public.~~

~~(d) Effective July 1, 2014, the Hispanic Achievers license plate will shift into the presale voucher phase, as provided in s. 320.08053(2)(b). National Hispanic Corporate Achievers, Inc., shall have 24 months to record a minimum of 1,000 sales. Sales include existing active plates and vouchers sold subsequent to July 1, 2014. During the voucher period, new plates may not be issued, but existing plates may be renewed. If, at the conclusion of the 24-month presale period, the requirement of a minimum of 1,000 sales has been met, the department shall resume normal distribution of the Hispanic Achievers license plate. If, after 24 months, the minimum of 1,000 sales has not been met, the department shall discontinue the Hispanic Achievers license plate. This subsection is repealed June 30, 2016.~~

(76) ~~(80)~~ FALLEN LAW ENFORCEMENT OFFICERS LICENSE PLATES.—

(b) The annual use fees shall be distributed to the Police and Kids Foundation, Inc., which may use up to ~~a maximum of~~ 10 percent of the proceeds for marketing ~~to promote and market~~ the plate. All remaining proceeds shall be distributed to and used by the Police and Kids Foundation, Inc., for its operations, activities, programs, and projects ~~The remainder of the proceeds shall be used by the Police and Kids Foundation, Inc., to invest and reinvest, and the interest earnings shall be used for the operation of the Police and Kids Foundation, Inc~~.

(80) DUCKS UNLIMITED LICENSE PLATES.—

934212

(a) The department shall develop a Ducks Unlimited license plate as provided in this section and s. 320.08053. Ducks Unlimited license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Conserving Florida Wetlands" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Ducks Unlimited, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to be used as follows:

1. Up to 5 percent may be used for administrative costs and marketing of the plate.

2. A minimum of 95 percent shall be used in this state to support the mission and efforts of Ducks Unlimited, Inc., for the conservation, restoration, and management of Florida wetlands and associated habitats for the benefit of waterfowl, other wildlife, and people.

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

And the title is amended as follows:

Delete lines 101 - 107

and insert:

320.08056, F.S.; deleting the American Red Cross, Donate Organs-Pass It On, St. Johns River, and Hispanic Achievers license plates; establishing an annual use fee for the Ducks Unlimited license plate; conforming cross-references; amending s. 320.08058, F.S.; deleting the American Red Cross, Donate Organs-Pass It On, St. Johns River, and Hispanic Achievers

license plates; revising the distribution of proceeds for the Fallen Law Enforcement Officers License Plate; requiring the Department of Highway Safety and Motor Vehicles to develop a Ducks Unlimited license plate; providing for distribution and use of fees collected from the sale of the plates;

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Bean) recommended the following:

Senate Substitute for Amendment (934212) (with title amendment)

Delete lines 1081 - 1103
and insert:

Section 19. Paragraphs (ee), (eee), (qqq), and (rrr) of subsection (4) of section 320.08056, Florida Statutes, are amended, paragraphs (bbbb) through (gggg) are added to that subsection, and paragraph (a) of subsection (10) of that section is amended, to read:

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320.08056 Specialty license plates.—

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

~~(ee) American Red Cross license plate, $25.~~

~~(eee) Donate Organs-Pass It On license plate, $25.~~

~~(qqq) St. Johns River license plate, $25.~~

~~(rrr) Hispanic Achievers license plate, $25.~~

(bbbb) Ducks Unlimited license plate, $25.

(cccc) Play Ball license plate, $25.

(dddd) America the Beautiful license plate, $25.

(eeee) Protect Pollinators plate, $25.

(ffff) Florida Native license plate, $25.

(gggg) Donate Life Florida license plate, $25.

(10)(a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1). The fees and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of United States Armed Forces and veterans-related specialty license plates pursuant to paragraphs (4)(d), (bb), (kk), (iii), and (uuu) ~~(ll), (kkk), and (yyy)~~ and s. 320.0891.

Section 20. Subsections (31), (57), (69), (70), and paragraph (b) of present subsection (80) of section 320.08058, Florida Statutes, are amended, and new subsections (80) through (85) are added to that section, to read:

320.08058 Specialty license plates.—

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~~(31) AMERICAN RED CROSS LICENSE PLATES.—~~

~~(a) Notwithstanding the provisions of s. 320.08053, the department shall develop an American Red Cross license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "American Red Cross" must appear at the bottom of the plate.~~

~~(b) The department shall retain all revenues from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, 50 percent of the annual use fees shall be distributed to the American Red Cross Chapter of Central Florida, with statistics on sales of license plates, which are tabulated by county. The American Red Cross Chapter of Central Florida must distribute to each of the chapters in this state the moneys received from sales in the counties covered by the respective chapters, which moneys must be used for education and disaster relief in Florida. Fifty percent of the annual use fees shall be distributed proportionately to the three statewide approved poison control centers for purposes of combating bioterrorism and other poison-related purposes.~~

~~(57) DONATE ORGANS-PASS IT ON LICENSE PLATES.—~~

~~(a) The department shall develop a Donate Organs-Pass It On license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "Donate Organs-Pass It On" must appear at the bottom of the plate.~~

~~(b) The annual use fees shall be distributed to Transplant Foundation, Inc., and shall use up to 10 percent of the proceeds from the annual use fee for marketing and administrative costs that are directly associated with the management and~~


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~~distribution of the proceeds. The remaining proceeds shall be used to provide statewide grants for patient services, including preoperative, rehabilitative, and housing assistance; organ donor education and awareness programs; and statewide medical research.~~

~~(69) ST. JOHNS RIVER LICENSE PLATES.—~~

~~(a) The department shall develop a St. Johns River license plate as provided in this section. The St. Johns River license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "St. Johns River" must appear at the bottom of the plate.~~

~~(b) The requirements of s. 320.08053 must be met prior to the issuance of the plate. Thereafter, the license plate annual use fees shall be distributed to the St. Johns River Alliance, Inc., a s. 501(c)(3) nonprofit organization, which shall administer the fees as follows:~~

~~1. The St. Johns River Alliance, Inc., shall retain the first $60,000 of the annual use fees as direct reimbursement for administrative costs, startup costs, and costs incurred in the development and approval process. Thereafter, up to 10 percent of the annual use fee revenue may be used for administrative costs directly associated with education programs, conservation, research, and grant administration of the organization, and up to 10 percent may be used for promotion and marketing of the specialty license plate.~~

~~2. At least 30 percent of the fees shall be available for competitive grants for targeted community-based or county-based research or projects for which state funding is limited or not~~

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~~currently available. The remaining 50 percent shall be directed toward community outreach and access programs. The competitive grants shall be administered and approved by the board of directors of the St. Johns River Alliance, Inc. A grant advisory committee shall be composed of six members chosen by the St. Johns River Alliance board members.~~

~~3. Any remaining funds shall be distributed with the approval of and accountability to the board of directors of the St. Johns River Alliance, Inc., and shall be used to support activities contributing to education, outreach, and springs conservation.~~

~~4. Effective July 1, 2014, the St. Johns River license plate will shift into the presale voucher phase, as provided in s. 320.08053(2)(b). The St. Johns River Alliance, Inc., shall have 24 months to record a minimum of 1,000 sales of the license plates. Sales include existing active plates and vouchers sold subsequent to July 1, 2014. During the voucher period, new plates may not be issued, but existing plates may be renewed. If, at the conclusion of the 24-month presale period, the requirement of a minimum of 1,000 sales has been met, the department shall resume normal distribution of the St. Johns River specialty plate. If, after 24 months, the minimum of 1,000 sales has not been met, the department shall discontinue the development and issuance of the plate. This subparagraph is repealed June 30, 2016.~~

~~(70) HISPANIC ACHIEVERS LICENSE PLATES.—~~

~~(a) Notwithstanding the requirements of s. 320.08053, the department shall develop a Hispanic Achievers license plate as provided in this section. The plate must bear the colors and~~

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~~design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Hispanic Achievers" must appear at the bottom of the plate.~~

~~(b) The proceeds from the license plate annual use fee shall be distributed to National Hispanic Corporate Achievers, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to fund grants to nonprofit organizations to operate programs and provide scholarships and for marketing the Hispanic Achievers license plate. National Hispanic Corporate Achievers, Inc., shall establish a Hispanic Achievers Grant Council that shall provide recommendations for statewide grants from available Hispanic Achievers license plate proceeds to nonprofit organizations for programs and scholarships for Hispanic and minority Floridians. National Hispanic Corporate Achievers, Inc., shall also establish a Hispanic Achievers License Plate Fund. Moneys in the fund shall be used by the grant council as provided in this paragraph. All funds received under this subsection must be used in this state.~~

~~(c) National Hispanic Corporate Achievers, Inc., may retain all proceeds from the annual use fee until documented startup costs for developing and establishing the plate have been recovered. Thereafter, the proceeds from the annual use fee shall be used as follows:~~

~~1. Up to 5 percent of the proceeds may be used for the cost of administration of the Hispanic Achievers License Plate Fund, the Hispanic Achievers Grant Council, and related matters.~~

~~2. Funds may be used as necessary for annual audit or compliance affidavit costs.~~

~~3. Up to 20 percent of the proceeds may be used to market~~

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~~and promote the Hispanic Achievers license plate.~~

~~4. Twenty-five percent of the proceeds shall be used by the Hispanic Corporate Achievers, Inc., located in Seminole County, for grants.~~

~~5. The remaining proceeds shall be available to the Hispanic Achievers Grant Council to award grants for services, programs, or scholarships for Hispanic and minority individuals and organizations throughout Florida. All grant recipients must provide to the Hispanic Achievers Grant Council an annual program and financial report regarding the use of grant funds. Such reports must be available to the public.~~

~~(d) Effective July 1, 2014, the Hispanic Achievers license plate will shift into the presale voucher phase, as provided in s. 320.08053(2)(b). National Hispanic Corporate Achievers, Inc., shall have 24 months to record a minimum of 1,000 sales. Sales include existing active plates and vouchers sold subsequent to July 1, 2014. During the voucher period, new plates may not be issued, but existing plates may be renewed. If, at the conclusion of the 24-month presale period, the requirement of a minimum of 1,000 sales has been met, the department shall resume normal distribution of the Hispanic Achievers license plate. If, after 24 months, the minimum of 1,000 sales has not been met, the department shall discontinue the Hispanic Achievers license plate. This subsection is repealed June 30, 2016.~~

(76)~~(80)~~ FALLEN LAW ENFORCEMENT OFFICERS LICENSE PLATES.—

(b) The annual use fees shall be distributed to the Police and Kids Foundation, Inc., which may use up to ~~a maximum of~~ 10 percent of the proceeds for marketing ~~to promote and market~~ the plate. All remaining proceeds shall be distributed to and used

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by the Police and Kids Foundation, Inc., for its operations, activities, programs, and projects ~~The remainder of the proceeds shall be used by the Police and Kids Foundation, Inc., to invest and reinvest, and the interest earnings shall be used for the operation of the Police and Kids Foundation, Inc~~.

(80) DUCKS UNLIMITED LICENSE PLATES.—

(a) The department shall develop a Ducks Unlimited license plate as provided in this section and s. 320.08053. Ducks Unlimited license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Conserving Florida Wetlands" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Ducks Unlimited, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to be used as follows:

1. Up to 5 percent may be used for administrative costs and marketing of the plate.

2. A minimum of 95 percent shall be used in this state to support the mission and efforts of Ducks Unlimited, Inc., for the conservation, restoration, and management of Florida wetlands and associated habitats for the benefit of waterfowl, other wildlife, and people.

(81) PLAY BALL LICENSE PLATES.—

(a) The department shall develop a Play Ball license plate as provided in this section and s. 320.08053. Play Ball license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Play Ball" must appear at the bottom of

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the plate.

(b) The license plate annual use fees shall be distributed to American Dream Baseball, Inc., which may retain all proceeds from the annual use fees until the startup costs for developing and issuing the license plates have been recovered. Thereafter, American Dream Baseball, Inc., may use the proceeds as follows:

1. A maximum of 15 percent may be used for administrative costs of the organization associated with implementing the programs funded by proceeds derived from sales of the specialty license plate.

2. A maximum of 10 percent may be used for promotion and marketing costs of the license plate.

3. The remainder shall be used to fund the activities, programs, and projects of American Dream Baseball, Inc.

(82) AMERICA THE BEAUTIFUL LICENSE PLATES.—

(a) The department shall develop an America The Beautiful license plate as provided in this section and s. 320.08053. The word "Florida" must appear at the top of the plate, and the words "America The Beautiful" must appear on the plate.

(b) The annual use fees from the plate shall be distributed to the America the Beautiful Fund as follows: 10 percent to offset its administrative, marketing and promotion costs, and the remaining 85 percent for projects and programs teaching character, leadership, and service to Florida youth; provision of wellbeing and assistance in the military community; outdoor education advancing self-sufficiency; wildlife conservation including imperiled and managed species; the maintenance of historic or culturally important sites, buildings, structures, or objects, and the development and modification of playgrounds,

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recreational areas, or other outdoor amenities, including disability access.

(83) PROTECT POLLINATORS PLATES.—

(a) The department shall develop a Protect Pollinators license plate as provided in this section and s. 320.08053. The word "Florida" must appear at the top of the plate, and the words "Protect Pollinators" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to the Florida Wildflower Foundation Inc., which:

1. May use a maximum of 10 percent of the proceeds to market, promote, and administer the Protect Pollinators plate.

2. Shall use the remainder of the proceeds to establish pollinator wildflower habitats, fund pollinator education and research programs, and promote awareness of pollinators, including butterflies, native bees and honeybees, hummingbirds, bats, and hundreds of other insects and animal pollinator species, and their importance to Florida agricultural success and the security of the food supply.

(84) FLORIDA NATIVE LICENSE PLATES.—

(a) The department shall develop a Florida Native license plate as provided in this section and s. 320.08053. The word "Florida" must appear at the top of the plate, and the word "Native" must appear at the bottom of the plate. The plate must contain a camouflage background including leaves, flowers, or fronds of a minimum of 12 different Florida native plants.

(b)1. The department shall retain all annual use fees from the sale of the plate until all startup costs for developing and issuing the plate have been recovered.

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2. Thereafter, the annual use fees from the sale of the plate shall be distributed to Florida Native Plant Society, a Florida nonprofit corporation, which may use a maximum of 10 percent of such fees for administrative costs and a maximum of 20 percent to market and promote the plate. The balance of the fees shall be used by Florida Native Plant Society, to fulfill the mission of the Florida Native Plant Society, where a minimum of 25 percent is dedicated to maintaining, improving, and restoring public native species, hunting and fishing habitats, and 25 percent is used to promote the cultivation of Florida's agricultural products through the preservation of native noncrop plants to provide habitats for pollinators and natural enemies to plant pests, and to provide pollen and nectar and undisturbed habitats for bee nesting throughout the growing season.

(85) DONATE LIFE FLORIDA LICENSE PLATES.—

(a) The department shall develop a Donate Life Florida license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Donors Saves Lives" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed to Donate Life Florida, which may use up to 10 percent of the proceeds for marketing and administrative costs. The remaining proceeds of the annual use fees shall be used by the Donate Life Florida to educate Florida residents on the importance of organ, tissue and eye donation and for the continued maintenance of the Joshua Abbott Organ and Tissue Donor Registry.

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301
302 ================ T I T L E A M E N D M E N T ================
303 And the title is amended as follows:
304 Delete lines 101 - 107
305 and insert:
306 320.08056, F.S.; deleting the American Red Cross,
307 Donate Organs-Pass It On, St. Johns River, and
308 Hispanic Achievers license plates; establishing an
309 annual use fee for certain specialty license plate;
310 conforming cross-references; amending s. 320.08058,
311 F.S.; deleting the American Red Cross, Donate Organs-
312 Pass It On, St. Johns River, and Hispanic Achievers
313 license plates; revising the distribution of proceeds
314 for the Fallen Law Enforcement Officers License Plate;
315 requiring the Department of Highway Safety and Motor
316 Vehicles to develop certain specialty license plates;
317 providing for distribution and use of fees collected
318 from the sale of the plates;

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Gainer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1081 - 1103
and insert:
Section 19. Paragraphs (ee), (eee), (qqq), and (rrr) of subsection (4) of section 320.08056, Florida Statutes, are amended, paragraph (bbbb) is added to that subsection, and paragraph (a) of subsection (10) of that section is amended, to read:
320.08056 Specialty license plates.—

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(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

~~(ee) American Red Cross license plate, $25.~~

~~(eee) Donate Organs-Pass It On license plate, $25.~~

~~(qqq) St. Johns River license plate, $25.~~

~~(rrr) Hispanic Achievers license plate, $25.~~

(bbbb) Florida State Beekeepers Association license plate, $25.

(10)(a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1). The fees and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of United States Armed Forces and veterans-related specialty license plates pursuant to paragraphs (4)(d), (bb), (kk), (iii), and (uuu) ~~(ll), (kkk), and (yyy)~~ and s. 320.0891.

Section 20. Subsections (31), (57), (69), (70) of section 320.08058, Florida Statutes, are amended, and a new subsection (80) is added to that section, to read:

320.08058 Specialty license plates.—

~~(31) AMERICAN RED CROSS LICENSE PLATES.—~~

~~(a) Notwithstanding the provisions of s. 320.08053, the department shall develop an American Red Cross license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "American Red Cross" must appear at the bottom of the plate.~~

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~~(b) The department shall retain all revenues from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, 50 percent of the annual use fees shall be distributed to the American Red Cross Chapter of Central Florida, with statistics on sales of license plates, which are tabulated by county. The American Red Cross Chapter of Central Florida must distribute to each of the chapters in this state the moneys received from sales in the counties covered by the respective chapters, which moneys must be used for education and disaster relief in Florida. Fifty percent of the annual use fees shall be distributed proportionately to the three statewide approved poison control centers for purposes of combating bioterrorism and other poison-related purposes.~~

~~(57) DONATE ORGANS-PASS IT ON LICENSE PLATES.—~~

~~(a) The department shall develop a Donate Organs-Pass It On license plate as provided in this section. The word "Florida" must appear at the top of the plate, and the words "Donate Organs-Pass It On" must appear at the bottom of the plate.~~

~~(b) The annual use fees shall be distributed to Transplant Foundation, Inc., and shall use up to 10 percent of the proceeds from the annual use fee for marketing and administrative costs that are directly associated with the management and distribution of the proceeds. The remaining proceeds shall be used to provide statewide grants for patient services, including preoperative, rehabilitative, and housing assistance; organ donor education and awareness programs; and statewide medical research.~~

~~(69) ST. JOHNS RIVER LICENSE PLATES.—~~

~~(a) The department shall develop a St. Johns River license plate as provided in this section. The St. Johns River license plates must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "St. Johns River" must appear at the bottom of the plate.~~

~~(b) The requirements of s. 320.08053 must be met prior to the issuance of the plate. Thereafter, the license plate annual use fees shall be distributed to the St. Johns River Alliance, Inc., a s. 501(c)(3) nonprofit organization, which shall administer the fees as follows:~~

~~1. The St. Johns River Alliance, Inc., shall retain the first $60,000 of the annual use fees as direct reimbursement for administrative costs, startup costs, and costs incurred in the development and approval process. Thereafter, up to 10 percent of the annual use fee revenue may be used for administrative costs directly associated with education programs, conservation, research, and grant administration of the organization, and up to 10 percent may be used for promotion and marketing of the specialty license plate.~~

~~2. At least 30 percent of the fees shall be available for competitive grants for targeted community-based or county-based research or projects for which state funding is limited or not currently available. The remaining 50 percent shall be directed toward community outreach and access programs. The competitive grants shall be administered and approved by the board of directors of the St. Johns River Alliance, Inc. A grant advisory committee shall be composed of six members chosen by the St. Johns River Alliance board members.~~

~~3. Any remaining funds shall be distributed with the approval of and accountability to the board of directors of the St. Johns River Alliance, Inc., and shall be used to support activities contributing to education, outreach, and springs conservation.~~

~~4. Effective July 1, 2014, the St. Johns River license plate will shift into the presale voucher phase, as provided in s. 320.08053(2)(b). The St. Johns River Alliance, Inc., shall have 24 months to record a minimum of 1,000 sales of the license plates. Sales include existing active plates and vouchers sold subsequent to July 1, 2014. During the voucher period, new plates may not be issued, but existing plates may be renewed. If, at the conclusion of the 24-month presale period, the requirement of a minimum of 1,000 sales has been met, the department shall resume normal distribution of the St. Johns River specialty plate. If, after 24 months, the minimum of 1,000 sales has not been met, the department shall discontinue the development and issuance of the plate. This subparagraph is repealed June 30, 2016.~~

~~(70) HISPANIC ACHIEVERS LICENSE PLATES.—~~

~~(a) Notwithstanding the requirements of s. 320.08053, the department shall develop a Hispanic Achievers license plate as provided in this section. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Hispanic Achievers" must appear at the bottom of the plate.~~

~~(b) The proceeds from the license plate annual use fee shall be distributed to National Hispanic Corporate Achievers, Inc., a nonprofit corporation under s. 501(c)(3) of the Internal~~

~~Revenue Code, to fund grants to nonprofit organizations to operate programs and provide scholarships and for marketing the Hispanic Achievers license plate. National Hispanic Corporate Achievers, Inc., shall establish a Hispanic Achievers Grant Council that shall provide recommendations for statewide grants from available Hispanic Achievers license plate proceeds to nonprofit organizations for programs and scholarships for Hispanic and minority Floridians. National Hispanic Corporate Achievers, Inc., shall also establish a Hispanic Achievers License Plate Fund. Moneys in the fund shall be used by the grant council as provided in this paragraph. All funds received under this subsection must be used in this state.~~

~~(c) National Hispanic Corporate Achievers, Inc., may retain all proceeds from the annual use fee until documented startup costs for developing and establishing the plate have been recovered. Thereafter, the proceeds from the annual use fee shall be used as follows:~~

~~1. Up to 5 percent of the proceeds may be used for the cost of administration of the Hispanic Achievers License Plate Fund, the Hispanic Achievers Grant Council, and related matters.~~

~~2. Funds may be used as necessary for annual audit or compliance affidavit costs.~~

~~3. Up to 20 percent of the proceeds may be used to market and promote the Hispanic Achievers license plate.~~

~~4. Twenty-five percent of the proceeds shall be used by the Hispanic Corporate Achievers, Inc., located in Seminole County, for grants.~~

~~5. The remaining proceeds shall be available to the Hispanic Achievers Grant Council to award grants for services,~~

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~~programs, or scholarships for Hispanic and minority individuals and organizations throughout Florida. All grant recipients must provide to the Hispanic Achievers Grant Council an annual program and financial report regarding the use of grant funds. Such reports must be available to the public.~~

~~(d) Effective July 1, 2014, the Hispanic Achievers license plate will shift into the presale voucher phase, as provided in s. 320.08053(2)(b). National Hispanic Corporate Achievers, Inc., shall have 24 months to record a minimum of 1,000 sales. Sales include existing active plates and vouchers sold subsequent to July 1, 2014. During the voucher period, new plates may not be issued, but existing plates may be renewed. If, at the conclusion of the 24-month presale period, the requirement of a minimum of 1,000 sales has been met, the department shall resume normal distribution of the Hispanic Achievers license plate. If, after 24 months, the minimum of 1,000 sales has not been met, the department shall discontinue the Hispanic Achievers license plate. This subsection is repealed June 30, 2016.~~

(80) FLORIDA STATE BEEKEEPERS ASSOCIATION LICENSE PLATES.—

(a) The department shall develop a Florida State Beekeepers Association license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Save the Bees" must appear at the bottom of the plate.

(b) The annual use fees shall be distributed to the Florida State Beekeepers Association, a Florida nonprofit corporation. The Florida State Beekeepers Association may use up to 18 percent of the annual use fees for:

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1. Direct reimbursement for administrative costs, startup costs, and costs incurred in the development and approval process of the license plate. All vendors associated with the administrative costs shall be selected by competitive bid.

2. Promotion and marketing costs of the license plate.

(c) The remaining funds shall be distributed to the Florida State Beekeepers Association and shall be used to raise awareness of the importance of beekeeping to Florida agriculture by funding honeybee research, education, outreach, and husbandry. The Florida State Beekeepers Association board of managers must approve and is accountable for all such expenditures.

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

And the title is amended as follows:

Delete lines 101 - 107

and insert:

320.08056, F.S.; deleting the American Red Cross, Donate Organs-Pass It On, St. Johns River, and Hispanic Achievers license plates; establishing an annual use fee for the Florida State Beekeepers Association license plate; conforming cross-references; amending s. 320.08058, F.S.; deleting the American Red Cross, Donate Organs-Pass It On, St. Johns River, and Hispanic Achievers license plates; requiring the Department of Highway Safety and Motor Vehicles to develop a Florida State Beekeepers Association license plate; providing for distribution and use of fees collected from the sale of the plates;

407566

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 1234 and 1235
insert:

Section 25. Subsection (10) is added to section 320.131, Florida Statutes, to read:

320.131 Temporary tags.—

(10) Beginning October 1, 2017, the department may partner with a county tax collector to conduct a Fleet Vehicle Temporary Tag pilot program to provide temporary tags to fleet companies

to allow them to operate fleet vehicles awaiting a permanent registration and title.

(a) The department shall establish a memorandum of understanding that allows a maximum of three companies to participate in the pilot program to receive multiple temporary tags for company fleet vehicles.

(b) To participate in the program a fleet company must have a minimum of 3,500 fleet vehicles registered in this state that qualify to be registered as fleet vehicles pursuant to s. 320.0657.

(c) The department may issue up to 50 temporary tags at a time to an eligible fleet company, if requested by such company.

(d) The temporary tags are for exclusive use for a vehicle purchased for the company's fleet, and may not be used on any other vehicle.

(e) Each temporary plate may be used by only one vehicle and each vehicle may only use one temporary plate.

(f) Upon issuance of the vehicle's permanent license plate and registration, the temporary tag becomes invalid and must be removed from the vehicle and destroyed.

(g) Upon a finding by the department that a temporary tag has been misused by a fleet company under this program, the department may terminate the memorandum of understanding with the company, invalidate all temporary tags issued to the company under this program, and require such company to return any unused temporary tags.

(h) This subsection is repealed on October 1, 2019, unless saved from repeal through reenactment by the Legislature.

407566

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Between lines 120 and 121
insert:
320.131, F.S.; creating a Fleet Vehicle Temporary Tag pilot program; amending s.

349606

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Gainer) recommended the following:

Senate Amendment (with title amendment)

Between lines 1727 and 1728
insert:
Section 36. Section 322.161, Florida Statutes, is amended to read:
322.161 High-risk drivers; restricted licenses.—
(1) This section may be cited as the "Brittany Baxter Act."
(2) ~~(1)~~ (a) Notwithstanding any provision of law to the contrary, the department shall restrict the driving privilege of


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any Class E licensee who is age 15 through 17 and who has accumulated six or more points pursuant to s. 318.14, excluding parking violations, within an 18-month ~~a 12-month~~ period.

(b) Upon determination that any person has accumulated seven ~~six~~ or more points, the department shall notify the licensee and issue the licensee a restricted license for business purposes only. The licensee must appear before the department within 10 days after notification to have this restriction applied. The period of restriction shall be for ~~a period of no less than 1 year~~ 30 days beginning on the date it is applied by the department. During the period of restriction, the licensee must complete a 12-hour approved advanced driver improvement course and receive 4 hours of behind-the-wheel training from a Florida licensed commercial driving school. Successful completion of a behind-the-wheel examination is required in order to receive completion credit for the course.

(c) The restriction shall be automatically withdrawn by the department after 1 year if the licensee has completed such driver improvement course approved by the department and does not accumulate any additional points. If the licensee has not completed the course requirement, the period of restriction shall be extended until such time as the licensee completes the course requirement. If the licensee accumulates any additional points, ~~then~~ the period of restriction shall be extended for at least 90 days and up to one year for each point. The restriction shall also be automatically withdrawn upon the licensee's 18th birthday if no other grounds for restriction exist. The licensee must appear before the department to have the restriction removed and a duplicate license issued.

349606

(3) ~~(2)~~ Any action taken by the department pursuant to this section shall not be subject to any formal or informal administrative hearing or similar administrative procedure.

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

And the title is amended as follows:

Between lines 214 and 215

insert:

322.161; providing a short title; revising the period of time in which certain licensees may accumulate points before being issued a restricted driver license by the department; requiring restricted licensees to attend a driver improvement course approved by the department; providing for extension of the restriction period under certain circumstances;

292206

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Book) recommended the following:

Senate Amendment (with title amendment)

Between lines 1925 and 1926
insert:

Section 40. Subsection (1) of section 531.37, Florida Statutes, is amended to read:

531.37 Definitions.—As used in this chapter:

(1) "Weights and measures" means 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, excluding taximeters, transportation measurement systems, and those weights and measures used for the purpose of inspecting the accuracy of devices used in conjunction with aviation fuel.

Section 41. Subsection (1) of section 531.61, Florida Statutes, is amended, and present subsections (2) and (3) of that section are redesignated as subsections (1) and (2), respectively, to read:

531.61 Exemptions from permit requirement.—Commercial weights or measures instruments or devices are exempt from the requirements of ss. 531.60-531.66 if:

~~(1) The device is a taximeter that is licensed, permitted, or registered by a municipality, county, or other local government and is tested for accuracy and compliance with state standards by the local government in cooperation with the state as authorized in s. 531.421.~~

Section 42. Paragraph (g) of subsection (2) of section 531.63, Florida Statutes, is amended, and present paragraphs (h) and (i) of that subsection are redesignated as paragraphs (g) and (h), respectively, to read:

531.63 Maximum permit fees.—The commercial use permit fees established for weights or measures instruments or devices shall be in an amount necessary to administer this chapter but may not exceed the amounts provided in this section.

(2) For other measuring devices, the annual permit fees per device may not exceed the following:

~~(g) Taximeters.....$50.~~

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

292206

And the title is amended as follows:

Delete line 246

and insert:

cash; amending s. 531.37, F.S.; revising the definition of the term "weights and measures"; amending s. 531.61, F.S.; deleting a provision exempting certain taximeters from specified permit requirements; amending s. 531.63, F.S.; deleting a provision prohibiting the annual permit fees for taximeters from exceeding $50; amending s. 877.27, F.S.; prohibiting a person

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 motor vehicles; amending s. 316.003, F.S.; defining the term "autocycle"; redefining the term "motorcycle"; conforming a cross-reference; amending ss. 316.2397 and 316.2398, F.S.; prohibiting vehicles or equipment from showing or displaying red and white lights while being driven or moved; authorizing firefighters to use or display red and white lights under certain circumstances; authorizing active volunteer firefighters to display red and white warning signals under certain circumstances; amending s. 316.302, F.S.; revising provisions relating to federal regulations to which owners and drivers of commercial motor vehicles are subject; delaying the requirement for electronic logging devices for intrastate motor carriers; terminating the maximum amount of a civil penalty for falsification of information on certain time records; deleting the requirement that a motor carrier maintain documentation of a driver's driving times throughout a duty period if the driver is not released from duty within a specified period; providing an exemption from specified rules and regulations for a person who operates a commercial motor vehicle with a declared gross vehicle weight, gross vehicle weight rating, and gross combined weight rating of less than a specified

amount under certain circumstances; amending s. 316.3025, F.S.; conforming provisions to changes made by the act; amending s. 316.614, F.S.; redefining the term "motor vehicle"; prohibiting a person from operating an autocycle unless certain safety belt or child restraint device requirements are met; amending s. 316.85, F.S.; authorizing a person who possesses a valid driver license to engage autonomous technology to operate an autonomous vehicle under a specified circumstance; authorizing a person who does not possess a valid driver license to engage autonomous technology to operate an autonomous vehicle in autonomous mode under certain circumstances; creating s. 316.851, F.S.; requiring an autonomous vehicle used by a transportation network company to be covered by automobile insurance, subject to certain requirements; requiring an autonomous vehicle used to provide a transportation service to carry in the vehicle proof of coverage satisfying certain requirements at all times while operating in autonomous mode; amending s. 318.1215, F.S.; authorizing a board of county commissioners to require, by ordinance, that the clerk of the court collect an additional specified fee with each criminal, rather than each civil, traffic penalty; amending s. 318.18, F.S.; changing the term "construction zone" to "work zone" as it relates to enhanced penalties for unlawful speed; amending s. 320.01, F.S.; redefining the terms "apportionable vehicle" and "motorcycle"; amending s. 320.02, F.S.;

requiring an application form for motor vehicle registration to include language authorizing a voluntary contribution to be distributed to Preserve Vision Florida, rather than to Prevent Blindness Florida; amending s. 320.03, F.S.; requiring tax collectors to provide motor vehicle registration services to residents of other counties; providing that jurisdiction over the electronic filing system for use by authorized electronic filing system agents to process title transactions, derelict motor vehicle certificates, and certificates of destruction for derelict and salvage motor vehicles is preempted to the state; authorizing an entity that, in the normal course of its business, processes title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict or salvage motor vehicles to be an authorized electronic filing system agent; authorizing the department to adopt rules to administer specified provisions; amending s. 320.06, F.S.; providing for future repeal of issuance of a certain annual license plate and cab card to a vehicle that has an apportioned registration; providing requirements, beginning on a specified date, for license plates, cab cards, and validation stickers for vehicles registered in accordance with the International Registration Plan; authorizing a worn or damaged license plate to be replaced at no charge under certain circumstances; amending s. 320.0605, F.S.; authorizing presentation of electronic

documentation of certain information to a law enforcement officer or agent of the department; providing construction; providing liability; revising information required in such documentation; amending s. 320.0607, F.S.; providing an exemption, beginning on a specified date, of a certain fee for vehicles registered under the International Registration Plan; amending s. 320.08, F.S.; requiring a truck tractor used within this state to be eligible for a license plate for a specified fee under certain circumstances; requiring a truck tractor or heavy truck, not operated as a for-hire vehicle, which is engaged exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products within this state to be eligible for a restricted license for a certain fee; conforming cross-references; amending s. 320.08056, F.S.; deleting the American Red Cross, Donate Organs-Pass It On, St. Johns River, and Hispanic Achievers license plates; conforming cross-references; repealing s. 320.08058(31), (57), (69), and (70), F.S., relating to the American Red Cross, Donate Organs-Pass It On, St. Johns River, and Hispanic Achievers license plates, respectively; amending s. 320.08068, F.S.; requiring The Able Trust to distribute a specified percentage of annual use fees from motorcycle specialty license plates to Preserve Vision Florida, rather than to Prevent Blindness Florida; amending s. 320.086, F.S.; providing that, for purposes of this section, a

trailer is considered a motor vehicle; creating s. 320.0875, F.S.; providing for a motorcycle special license plate to be issued to a recipient of the Purple Heart; providing requirements for the plate; amending s. 320.089, F.S.; providing for a special license plate to be issued to a recipient of the Bronze Star; making technical changes; amending s. 320.133, F.S.; defining the term "transporter license plate eligible business"; providing that a person is not eligible to purchase or renew a transporter license plate unless he or she provides certain proof that his or her business is a transporter license plate eligible business; providing application and insurance requirements for qualification as a transporter license plate eligible business; authorizing the department to issue a transporter license plate to an applicant who is not a licensed dealer and is qualified as a transporter license plate eligible business, under certain circumstances; providing that a transporter license plate is valid only for use on an unregistered motor vehicle in the possession of the transporter, subject to certain requirements; providing a criminal penalty for a person who sells or unlawfully possesses, distributes, or brokers a transporter license plate to be attached to any vehicle; providing that transporter license plates are subject to cancellation by the department; providing a criminal penalty and disqualification from transporter license plate usage for a person who

knowingly and willfully sells or unlawfully possesses, distributes, or brokers a transporter license plate to avoid registering a vehicle requiring registration, subject to certain requirements; providing recordkeeping requirements for a transporter license plate eligible business; providing a criminal penalty, cancellation of transporter license plates, and disqualification from future issuance of the plates for a violation of such recordkeeping requirements; requiring a transporter license plate issued under this section to be accompanied by registration and proof of insurance when attached to a motor vehicle; providing a criminal penalty and removal of the license plate for a person who fails to provide such documentation; providing an exemption to persons who contract with dealers and auctions to transport motor vehicles; conforming provisions to changes made by the act; providing that an initial registration or renewal issued under this section is valid for a specified period; requiring a license plate attached to a motor vehicle in violation of specified provision to be removed by a law enforcement officer and surrendered to the department by the law enforcement agency for cancellation; amending s. 320.27, F.S.; revising the definitions of "motor vehicle dealer" and "motor vehicle broker"; requiring any person acting in violation of specified licensing requirements to be deemed to have committed an unfair and deceptive trade practice in violation of specified provisions; making

technical changes; amending s. 321.25, F.S.; providing for reimbursement to the department of tuition and other course expenses for certain training under certain circumstances; defining the term "other course expenses"; authorizing the department to institute a civil action under certain circumstances; authorizing the department to waive a person's requirement of reimbursement when the person terminates employment due to hardship or extenuating circumstances; amending s. 322.01, F.S.; conforming provisions to changes made by the act; amending s. 322.03, F.S.; authorizing a person to operate an autocycle without a motorcycle endorsement; amending s. 322.032, F.S.; requiring the department, in collaboration with the Agency for State Technology, to establish and implement certain protocols and standards related to digital proofs of driver licenses and to procure an application programming interface for a specified purpose; conforming a provision to changes made by the act; providing construction relating to a person's presentation of an electronic device displaying a digital proof of driver license to a law enforcement officer; amending s. 322.051, F.S.; revising eligibility for a "D" designation on an identification card to include posttraumatic stress disorder or traumatic brain injury; amending s. 322.08, F.S.; requiring an application form for an original, renewal, or replacement driver license or identification card to include language authorizing a

voluntary contribution to Preserve Vision Florida, rather than to Prevent Blindness Florida; amending s. 322.091, F.S.; requiring the department to make available, upon request, a report to each school district of certain information for each student whose driving privileges have been suspended under this section; amending s. 322.12, F.S.; requiring the tax collector to retain specified fees if a subsequent knowledge or skills test is administered by the tax collector; exempting the operation of an autocycle from certain examination requirements for licenses to operate motorcycles; amending s. 322.135, F.S.; requiring tax collectors to provide driver license services to residents of all counties; amending s. 322.17, F.S.; providing for replacement of a stolen identification card at no charge, subject to certain requirements; amending s. 322.21, F.S.; deleting obsolete provisions; deleting a fee for certain specialty driver licenses or identification cards; providing disposition of specified fees for reinstatement of a driver license following a suspension, revocation, or disqualification when the reinstatement is processed by the department or the tax collector; requiring an applicant who submits an application for a renewal or replacement driver license or identification card to the department using a convenience service to be provided with an option for expedited shipping, subject to certain requirements; requiring a fee to be charged for the

expedited shipping option, subject to certain requirements; providing for disposition of such fee; amending s. 322.61, F.S.; adding violations for texting or using a handheld mobile telephone while driving a commercial motor vehicle as specified offenses that, in certain circumstances, result in disqualification from operating a commercial motor vehicle for a specified period; amending s. 324.031, F.S.; revising insurer requirements for a motor vehicle liability policy held by the owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle; revising certain excess insurance minimum limits for an operator or owner of any other vehicle proving his or her financial responsibility by furnishing a certain certificate of self-insurance showing a deposit of cash; amending s. 877.27, F.S.; prohibiting a person from using a device prohibited by the Federal Communications Commission which would cause interference with the legal use of a global positioning system to track vehicles; amending ss. 212.05, 316.303, 316.545, 316.613, and 655.960, F.S.; conforming cross-references; providing applicability of certain changes made by the act; providing effective dates, one of which is contingent.

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

Section 1. Present subsections (2) through (97) of section

316.003, Florida Statutes, are redesignated as subsections (3) through (98), respectively, a new subsection (2) is added to that section, and present subsections (41) and (55) of that section are amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(2) AUTOCYCLE.—A three-wheel motorcycle that has two wheels in the front and one wheel in the back, is equipped with a roll cage or roll hoops, safety belts for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it and is manufactured by a National Highway Traffic Safety Administration registered manufacturer in accordance with the applicable federal motorcycle safety standards under 49 C.F.R. part 571.

(42)~~(41)~~ MOTORCYCLE.—Any motor vehicle that has ~~having~~ a seat or saddle for the use of the rider which is ~~and~~ designed to travel on not more than three wheels in contact with the ground, including an autocycle. The term does not include a tractor, a moped, or a vehicle in which the operator is enclosed by a cabin unless the vehicle meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle ~~but excluding a tractor or a moped~~.

(56)~~(55)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (78)(b) ~~(77)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 2. Subsections (1) and (3) of section 316.2397, Florida Statutes, are amended to read:

316.2397 Certain lights prohibited; exceptions.—

(1) A ~~No~~ person may not ~~shall~~ drive or move or cause to be moved any vehicle or equipment upon any highway within this state with a ~~any~~ lamp or device thereon showing or displaying a red, red and white, or blue light visible from directly in front thereof except for certain vehicles ~~hereinafter~~ provided in this section.

(3) Vehicles of the fire department and fire patrol, including vehicles of volunteer firefighters as permitted under s. 316.2398, may show or display red, or red and white, lights. Vehicles of medical staff physicians or technicians of medical facilities licensed by the state as authorized under s. 316.2398, ambulances as authorized under this chapter, and buses and taxicabs as authorized under s. 316.2399 may show or display red lights. Vehicles of the fire department, fire patrol, police vehicles, and such ambulances and emergency vehicles of municipal and county departments, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Transportation, the Department of Agriculture and Consumer Services, and the Department of Corrections as are designated or authorized by their respective department or the chief of police of an incorporated city or any sheriff of any county may operate emergency lights and sirens in an emergency. Wreckers, mosquito control fog and spray vehicles, and emergency vehicles of governmental departments or public service corporations may show or display amber lights when in

actual operation or when a hazard exists provided they are not used going to and from the scene of operation or hazard without specific authorization of a law enforcement officer or law enforcement agency. Wreckers, flatbed, car carriers, or rollbacks registered as wreckers pursuant to s. 320.08(5)(d) or (e) must use amber rotating or flashing lights while performing recoveries and loading on the roadside day or night, and may use such lights while towing a vehicle on wheel lifts, slings, ~~or~~ under reach, flatbeds, car carriers, or rollbacks if the operator of the wrecker deems such lights necessary. ~~A flatbed, car carrier, or rollback may not use amber rotating or flashing lights when hauling a vehicle on the bed unless it creates a hazard to other motorists because of protruding objects.~~ Further, escort vehicles may show or display amber lights when in the actual process of escorting overdimensioned equipment, material, or buildings as authorized by law. Vehicles owned or leased by private security agencies may show or display green and amber lights, with either color being no greater than 50 percent of the lights displayed, while the security personnel are engaged in security duties on private or public property.

Section 3. Section 316.2398, Florida Statutes, is amended to read:

316.2398 Display or use of red, or red and white, warning signals; motor vehicles of volunteer firefighters or medical staff.—

(1) A privately owned vehicle belonging to an active firefighter member of a regularly organized volunteer firefighting company or association, while en route to the fire station for the purpose of proceeding to the scene of a fire or

other emergency or while en route to the scene of a fire or other emergency in the line of duty as an active firefighter member of a regularly organized firefighting company or association, may display or use red, or red and white, warning signals. ~~or~~ A privately owned vehicle belonging to a medical staff physician or technician of a medical facility licensed by the state, while responding to an emergency in the line of duty, may display or use red warning signals. Warning signals must be visible from the front and from the rear of such vehicle, subject to the following restrictions and conditions:

(a) Red, or red and white, ~~No more than two red~~ warning signals may be displayed as determined by the responding agency in order to maintain public safety and the safety of the responding vehicle occupants.

(b) No inscription of any kind may appear across the face of the lens of the red, or red and white, warning signal.

(c) In order for an active volunteer firefighter to display such red, or red and white, warning signals on his or her vehicle, the volunteer firefighter must first secure a written permit from the chief executive officers of the firefighting organization to use the red, or red and white, warning signals, and this permit must be carried by the volunteer firefighter at all times while the red, or red and white, warning signals are displayed.

(2) A ~~It is unlawful for any~~ person who is not an active firefighter member of a regularly organized volunteer firefighting company or association or a physician or technician of the medical staff of a medical facility licensed by the state may not ~~to~~ display on any motor vehicle owned by him or her, at

any time, any red, or red and white, warning signals as described in subsection (1).

(3) ~~It is unlawful for~~ An active volunteer firefighter may not ~~to~~ operate any red, or red and white, warning signals as authorized in subsection (1), except while en route to the fire station for the purpose of proceeding to the scene of a fire or other emergency, or while at or en route to the scene of a fire or other emergency, in the line of duty.

(4) ~~It is unlawful for~~ A physician or technician of the medical staff of a medical facility may not ~~to~~ operate any red warning signals as authorized in subsection (1), except when responding to an emergency in the line of duty.

(5) A violation of this section is a nonmoving violation, punishable as provided in chapter 318. In addition, a ~~any~~ volunteer firefighter who violates this section shall be dismissed from membership in the firefighting organization by the chief executive officers thereof.

Section 4. Subsection (1) and paragraphs (a), (c), (d), and (f) of subsection (2) of section 316.302, Florida Statutes, are amended to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.—

(1) Except as otherwise provided in subsection (3):

(a) All owners and drivers of commercial motor vehicles that are operated on the public highways of this state while engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged

in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 383, 385, and 390-397~~, with the exception of 49 C.F.R. s. 390.5 as it relates to the definition of bus,~~ as such rules and regulations existed on December 31, 2016 ~~2012~~.

(c) The emergency exceptions provided by 49 C.F.R. s. 392.82 also apply to communications by utility drivers and utility contractor drivers during a Level 1 activation of the State Emergency Operations Center, as provided in the Florida Comprehensive Emergency Management plan, or during a state of emergency declared by executive order or proclamation of the Governor.

(d) Except as provided in ~~s. 316.215(5), and except as provided in~~ s. 316.228 for rear overhang lighting and flagging requirements for intrastate operations, the requirements of this section supersede all other safety requirements of this chapter for commercial motor vehicles.

(e) The requirement for electronic logging devices and hours of service support documents will not go into effect for motor carriers engaged in intrastate commerce, not carrying hazardous materials in amounts that require placards, until December 31, 2018.

(2)(a) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 need not comply with 49 C.F.R. ss. 391.11(b)(1) and 395.3 ~~395.3(a) and (b)~~.

(c) Except as provided in 49 C.F.R. s. 395.1, a person who operates a commercial motor vehicle solely in intrastate

commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 may not drive after having been on duty more than 70 hours in any period of 7 consecutive days or more than 80 hours in any period of 8 consecutive days if the motor carrier operates every day of the week. Thirty-four consecutive hours off duty shall constitute the end of any such period of 7 or 8 consecutive days. This weekly limit does not apply to a person who operates a commercial motor vehicle solely within this state while transporting, during harvest periods, any unprocessed agricultural products or unprocessed food or fiber that is subject to seasonal harvesting from place of harvest to the first place of processing or storage or from place of harvest directly to market or while transporting livestock, livestock feed, or farm supplies directly related to growing or harvesting agricultural products. Upon request of the Department of Highway Safety and Motor Vehicles, motor carriers shall furnish time records or other written verification to that department so that the Department of Highway Safety and Motor Vehicles can determine compliance with this subsection. These time records must be furnished to the Department of Highway Safety and Motor Vehicles within 2 days after receipt of that department's request. Falsification of such information is subject to a civil penalty ~~not to exceed $100~~. ~~The provisions of~~ This paragraph does ~~do~~ not apply to operators of farm labor vehicles operated during a state of emergency declared by the Governor or operated pursuant to s. 570.07(21)~~,~~ and does ~~do~~ not apply to drivers of utility service vehicles as defined in 49 C.F.R. s. 395.2.

(d) A person who operates a commercial motor vehicle solely

in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 within a 150 air-mile radius of the location where the vehicle is based need not comply with 49 C.F.R. s. 395.8~~,~~ if the requirements of 49 C.F.R. s. 395.1(e)(1)(ii), (e)(1)(iii)(A) and (C), ~~395.1(e)(1)(iii)~~ and (e)(1)(v) are met. ~~If a driver is not released from duty within 12 hours after the driver arrives for duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period.~~

(f) A person who operates a commercial motor vehicle having a ~~declared~~ gross vehicle weight, gross vehicle weight rating, and gross combined weight rating of less than 26,001 pounds solely in intrastate commerce and who is not transporting hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172~~, or who is transporting petroleum products as defined in s. 376.301,~~ is exempt from subsection (1). However, such person must comply with 49 C.F.R. parts 382, 392, and 393~~,~~ and with 49 C.F.R. ss. 396.3(a)(1) and 396.9.

Section 5. Paragraph (a) of subsection (6) of section 316.3025, Florida Statutes, is amended to read:

316.3025 Penalties.—

(6)(a) A driver who violates 49 C.F.R. s. 392.80, which prohibits texting while operating a commercial motor vehicle, or 49 C.F.R. s. 392.82, which prohibits using a handheld mobile telephone while operating a commercial motor vehicle, may be assessed a civil penalty ~~and commercial driver license disqualification~~ as follows:

1. First violation: $500.

2. Second violation: $1,000 ~~and a 60-day commercial driver~~

~~license disqualification pursuant to 49 C.F.R. part 383~~.

3. Third and subsequent violations: $2,750 ~~and a 120-day commercial driver license disqualification pursuant to 49 C.F.R. part 383~~.

Section 6. Paragraph (a) of subsection (3) and subsections (4) and (5) of section 316.614, Florida Statutes, are amended to read:

316.614 Safety belt usage.—

(3) As used in this section:

(a) "Motor vehicle" means a motor vehicle as defined in s. 316.003 which is operated on the roadways, streets, and highways of this state. The term does not include:

1. A school bus.

2. A bus used for the transportation of persons for compensation.

3. A farm tractor or implement of husbandry.

4. A truck having a gross vehicle weight rating of more than 26,000 pounds.

5. A motorcycle, excluding an autocycle for purposes of subsections (4) and (5), moped, or bicycle.

(4) It is unlawful for any person:

(a) To operate a motor vehicle or an autocycle in this state unless each passenger and the operator of the vehicle under the age of 18 years are restrained by a safety belt or by a child restraint device pursuant to s. 316.613, if applicable; or

(b) To operate a motor vehicle or an autocycle in this state unless the person is restrained by a safety belt.

(5) It is unlawful for any person 18 years of age or older

to be a passenger in the front seat of a motor vehicle or an autocycle unless such person is restrained by a safety belt when the vehicle is in motion.

Section 7. Subsection (1) of section 316.85, Florida Statutes, is amended to read:

316.85 Autonomous vehicles; operation.—

(1) A person who possesses a valid driver license may operate an autonomous vehicle, or may engage autonomous technology to operate an autonomous vehicle, in autonomous mode on roads in this state if the vehicle is equipped with autonomous technology, as defined in s. 316.003. A person who does not possess a valid driver license may engage autonomous technology to operate an autonomous vehicle in autonomous mode only if the vehicle is equipped with autonomous technology, as defined in s. 316.003, and if the vehicle has no capability or means by which the person inside the vehicle is able to take control of the vehicle's operation or to disengage the autonomous technology, regardless of where the person is seated within the vehicle.

Section 8. Effective upon the same date that SB 340 or similar legislation takes effect, if such legislation is adopted in the 2017 Regular Session or any extension thereof and becomes a law, section 316.851, Florida Statutes, is created to read:

316.851 Autonomous vehicles; providing prearranged rides.—

(1) An autonomous vehicle used by a transportation network company to provide a prearranged ride must be covered by automobile insurance as required by s. 627.748, regardless of whether a human operator is physically present within the vehicle when the ride occurs. When an autonomous vehicle is

logged on to a digital network but is not engaged in a prearranged ride, the autonomous vehicle must maintain insurance coverage as defined in s. 627.748(7)(b).

(2) An autonomous vehicle used to provide a transportation service shall carry in the vehicle proof of coverage satisfying the requirements of this section at all times while operating in autonomous mode.

Section 9. Section 318.1215, Florida Statutes, is amended to read:

318.1215 Dori Slosberg Driver Education Safety Act.—Notwithstanding the provisions of s. 318.121, a board of county commissioners may require, by ordinance, that the clerk of the court collect an additional $5 with each criminal ~~civil~~ traffic penalty, which shall be used to fund driver education programs in public and nonpublic schools. The ordinance shall provide for the board of county commissioners to administer the funds, which shall be used for enhancement, and not replacement, of driver education program funds. The funds shall be used for direct educational expenses and shall not be used for administration. Each driver education program receiving funds pursuant to this section shall require that a minimum of 30 percent of a student's time in the program be behind-the-wheel training. This section may be cited as the "Dori Slosberg Driver Education Safety Act."

Section 10. Paragraph (d) of subsection (3) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(3)

(d) Notwithstanding paragraph (b), a person cited for exceeding the speed limit in a posted work ~~construction~~ zone, which posting must include notification of the speed limit and the doubling of fines, shall pay a fine double the amount listed in paragraph (b). The fine shall be doubled for work ~~construction~~ zone violations only if work ~~construction~~ personnel are present or operating equipment on the road or immediately adjacent to the road ~~under construction~~.

Section 11. Subsections (24) and (26) of section 320.01, Florida Statutes, are amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(24) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, ~~buses used in transportation of chartered parties,~~ and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered.

(26) "Motorcycle" means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including an autocycle. The term does not include a tractor, a moped, or ~~excluding~~ a vehicle in which the operator is enclosed by a cabin unless the vehicle ~~it~~ meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle. ~~The term "motorcycle" does not include a tractor or a moped.~~

Section 12. Paragraph (a) of subsection (15) of section 320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration; forms.—

(15)(a) The application form for motor vehicle registration must ~~shall~~ include language permitting the voluntary contribution of $1 per applicant, to be quarterly distributed by the department to Preserve Vision ~~Prevent Blindness~~ Florida, a not-for-profit organization, to prevent blindness and preserve the sight of the residents of this state. A statement providing an explanation of the purpose of the funds shall be included with the application form. Prior to the department distributing the funds collected pursuant to this paragraph, Preserve Vision ~~Prevent Blindness~~ Florida must submit a report to the department that identifies how such funds were used during the preceding year.

For the purpose of applying the service charge provided in s.

215.20, contributions received under this subsection are not income of a revenue nature.

Section 13. Subsection (1) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(1)(a) The tax collectors in the several counties of the state, as authorized agents of the department, shall issue registration certificates, registration license plates, validation stickers, and mobile home stickers to applicants, and shall provide to applicants for each the option to register emergency contact information and the option to be contacted with information about state and federal benefits available as a result of military service, subject to the requirements of law, in accordance with rules of the department. Each tax collector shall provide the same motor vehicle registration services in office to residents of other counties that it provides for residents of its home county.

(b) Any person, firm, or corporation representing itself, through advertising or naming of the business, to be an authorized agent of the department shall be deemed guilty of an unfair and deceptive trade practice as defined in part II of chapter 501. No such person, firm, or corporation shall use either the state or county name as a part of their business name when such use can reasonably be interpreted as an official state or county office.

Section 14. Effective July 1, 2018, subsection (10) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors;

International Registration Plan.—

(10)(a) Jurisdiction over the electronic filing system for use by authorized electronic filing system agents to electronically title or register motor vehicles, vessels, mobile homes, or off-highway vehicles; process title transactions, derelict motor vehicle certificates, and certificates of destruction for derelict and salvage motor vehicles pursuant to s. 319.30(2), (3), (7), and (8); issue or transfer registration license plates or decals; electronically transfer fees due for the title and registration process; and perform inquiries for title, registration, and lienholder verification and certification of service providers is expressly preempted to the state, and the department shall have regulatory authority over the system. The electronic filing system shall be available for use statewide and applied uniformly throughout the state. An entity that, in the normal course of its business, sells products that must be titled or registered; ~~,~~ provides title and registration services on behalf of its consumers; or processes title transactions, derelict motor vehicle certificates, or certificates of destruction for derelict or salvage motor vehicles pursuant to s. 319.30(2), (3), (7), and (8); and meets all established requirements may be an authorized electronic filing system agent and shall not be precluded from participating in the electronic filing system in any county. Upon request from a qualified entity, the tax collector shall appoint the entity as an authorized electronic filing system agent for that county. ~~The department shall adopt rules in accordance with chapter 120 to replace the December 10, 2009, program standards and to administer the provisions of this~~

~~section, including, but not limited to, establishing participation requirements, certification of service providers, electronic filing system requirements, and enforcement authority for noncompliance. The December 10, 2009, program standards, excluding any standards which conflict with this subsection, shall remain in effect until the rules are adopted.~~ An authorized electronic filing system agent may charge a fee to the customer for use of the electronic filing system.

(b) The department shall adopt rules to administer this subsection, including, but not limited to, rules establishing participation requirements, certification of service providers, electronic filing system requirements, disclosures, and enforcement authority for noncompliance.

Section 15. Paragraph (b) of subsection (1) of section 320.06, Florida Statutes, is amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(1)

(b)1. Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate shall be replaced. The department shall extend the scheduled license plate replacement date from a 6-year period to a 10-year period. The fee for such replacement is $28, $2.80 of which shall be paid each year before the plate is replaced, to be credited toward the next $28 replacement fee. The fees shall be deposited into the Highway Safety Operating Trust Fund. A credit or refund may not be given for any prior years' payments of the prorated replacement fee if the plate is

replaced or surrendered before the end of the 10-year period, except that a credit may be given if a registrant is required by the department to replace a license plate under s. 320.08056(8)(a). With each license plate, a validation sticker shall be issued showing the owner's birth month, license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker shall be placed on the upper right corner of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months, the extended registration period is 24 months, and all expirations occur based on the applicant's appropriate registration period.

2. A vehicle that has an apportioned registration shall be issued an annual license plate and a cab card denoting ~~that denote~~ the declared gross vehicle weight ~~for each apportioned jurisdiction in which the vehicle is authorized to operate~~. This subparagraph expires October 1, 2018.

3. Beginning October 1, 2018, a vehicle registered in accordance with the International Registration Plan which has an apportioned registration shall be issued a license plate for a 5-year period, an annual cab card denoting the declared gross vehicle weight, and an annual validation sticker showing the month and year of expiration. The validation sticker shall be placed in the center of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months. The fee for an original and a renewed validation sticker is $28. This fee shall be deposited into the Highway Safety

Operating Trust Fund. If the license plate is damaged or worn, it may be replaced at no charge by applying to the department and surrendering the current license plate.

4.~~2.~~ In order to retain the efficient administration of the taxes and fees imposed by this chapter, the 80-cent fee increase in the replacement fee imposed by chapter 2009-71, Laws of Florida, is negated as provided in s. 320.0804.

Section 16. Section 320.0605, Florida Statutes, is amended to read:

320.0605 Certificate of registration; possession required; exception.—

(1)(a) The registration certificate or an official copy thereof, a true copy or electronic copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period, a temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet, or a cab card issued for a vehicle registered under the International Registration Plan shall, at all times while the vehicle is being used or operated on the roads of this state, be in the possession of the operator thereof or be carried in the vehicle for which issued and shall be exhibited upon demand of any authorized law enforcement officer or any agent of the department, except for a vehicle registered under s. 320.0657. ~~The provisions of~~ This section does ~~do~~ not apply during the first 30 days after purchase of a replacement vehicle. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b)1. The act of presenting to a law enforcement officer or

agent of the department an electronic device displaying an electronic copy of rental or lease documentation does not constitute consent for the officer or agent to access any information on the device other than the displayed rental or lease documentation.

2. The person who presents the device to the officer or agent assumes the liability for any resulting damage to the device.

(2) Rental or lease documentation that is sufficient to satisfy the requirement in subsection (1) includes the following:

(a) Date ~~of rental~~ and time of ~~exit from~~ rental ~~facility~~;

(b) Rental station identification;

(c) Rental agreement number;

(d) Rental vehicle identification number;

(e) Rental vehicle license plate number and state of registration;

(f) Vehicle's make, model, and color;

(g) Vehicle's mileage; and

(h) Authorized renter's name.

Section 17. Subsection (5) of section 320.0607, Florida Statutes, is amended to read:

320.0607 Replacement license plates, validation decal, or mobile home sticker.—

(5) Upon the issuance of an original license plate, the applicant shall pay a fee of $28 to be deposited in the Highway Safety Operating Trust Fund. Beginning October 1, 2018, this subsection does not apply to a vehicle registered under the International Registration Plan.

Section 18. Section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(4) ~~s. 316.003(2)~~, tri-vehicles as defined in s. 316.003, and mobile homes as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(1) MOTORCYCLES AND MOPEDS.—

(a) Any motorcycle: $10 flat.

(b) Any moped: $5 flat.

(c) Upon registration of a motorcycle, motor-driven cycle, or moped, in addition to the license taxes specified in this subsection, a nonrefundable motorcycle safety education fee in the amount of $2.50 shall be paid. The proceeds of such additional fee shall be deposited in the Highway Safety Operating Trust Fund to fund a motorcycle driver improvement program implemented pursuant to s. 322.025, the Florida Motorcycle Safety Education Program established in s. 322.0255, or the general operations of the department.

(d) An ancient or antique motorcycle: $7.50 flat, of which $2.50 shall be deposited into the General Revenue Fund.

(2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

(a) An ancient or antique automobile, as defined in s. 320.086, or a street rod, as defined in s. 320.0863: $7.50 flat.

(b) Net weight of less than 2,500 pounds: $14.50 flat.

(c) Net weight of 2,500 pounds or more, but less than 3,500

pounds: $22.50 flat.

(d) Net weight of 3,500 pounds or more: $32.50 flat.

(3) TRUCKS.—

(a) Net weight of less than 2,000 pounds: $14.50 flat.

(b) Net weight of 2,000 pounds or more, but not more than 3,000 pounds: $22.50 flat.

(c) Net weight more than 3,000 pounds, but not more than 5,000 pounds: $32.50 flat.

(d) A truck defined as a "goat," or other vehicle if used in the field by a farmer or in the woods for the purpose of harvesting a crop, including naval stores, during such harvesting operations, and which is not principally operated upon the roads of the state: $7.50 flat. The term "goat" means a motor vehicle designed, constructed, and used principally for the transportation of citrus fruit within citrus groves or for the transportation of crops on farms, and which can also be used for hauling associated equipment or supplies, including required sanitary equipment, and the towing of farm trailers.

(e) An ancient or antique truck, as defined in s. 320.086: $7.50 flat.

(4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS VEHICLE WEIGHT.—

(a) Gross vehicle weight of 5,001 pounds or more, but less than 6,000 pounds: $60.75 flat, of which $15.75 shall be deposited into the General Revenue Fund.

(b) Gross vehicle weight of 6,000 pounds or more, but less than 8,000 pounds: $87.75 flat, of which $22.75 shall be deposited into the General Revenue Fund.

(c) Gross vehicle weight of 8,000 pounds or more, but less

than 10,000 pounds: $103 flat, of which $27 shall be deposited into the General Revenue Fund.

(d) Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: $118 flat, of which $31 shall be deposited into the General Revenue Fund.

(e) Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: $177 flat, of which $46 shall be deposited into the General Revenue Fund.

(f) Gross vehicle weight of 20,000 pounds or more, but less than 26,001 pounds: $251 flat, of which $65 shall be deposited into the General Revenue Fund.

(g) Gross vehicle weight of 26,001 pounds or more, but less than 35,000: $324 flat, of which $84 shall be deposited into the General Revenue Fund.

(h) Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: $405 flat, of which $105 shall be deposited into the General Revenue Fund.

(i) Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: $773 flat, of which $201 shall be deposited into the General Revenue Fund.

(j) Gross vehicle weight of 55,000 pounds or more, but less than 62,000 pounds: $916 flat, of which $238 shall be deposited into the General Revenue Fund.

(k) Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: $1,080 flat, of which $280 shall be deposited into the General Revenue Fund.

(l) Gross vehicle weight of 72,000 pounds or more: $1,322 flat, of which $343 shall be deposited into the General Revenue Fund.

(m) Notwithstanding the declared gross vehicle weight, a truck tractor used within this state ~~a 150-mile radius of its home address~~ is eligible for a license plate for a fee of $324 flat if:

1. The truck tractor is used exclusively for hauling forestry products; or

2. The truck tractor is used primarily for the hauling of forestry products, and is also used for the hauling of associated forestry harvesting equipment used by the owner of the truck tractor.

Of the fee imposed by this paragraph, $84 shall be deposited into the General Revenue Fund.

(n) A truck tractor or heavy truck, not operated as a for-hire vehicle, which is engaged exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products within this state ~~a 150-mile radius of its home address~~, is eligible for a restricted license plate for a fee of:

1. If such vehicle’s declared gross vehicle weight is less than 44,000 pounds, $87.75 flat, of which $22.75 shall be deposited into the General Revenue Fund.

2. If such vehicle’s declared gross vehicle weight is 44,000 pounds or more and such vehicle only transports from the point of production to the point of primary manufacture; to the point of assembling the same; or to a shipping point of a rail, water, or motor transportation company, $324 flat, of which $84 shall be deposited into the General Revenue Fund.

Such not-for-hire truck tractors and heavy trucks used exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products may be incidentally used to haul farm implements and fertilizers delivered direct to the growers. The department may require any documentation deemed necessary to determine eligibility prior to issuance of this license plate. For the purpose of this paragraph, "not-for-hire" means the owner of the motor vehicle must also be the owner of the raw, unprocessed, and nonmanufactured agricultural or horticultural product, or the user of the farm implements and fertilizer being delivered.

(5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT; SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

(a)1. A semitrailer drawn by a GVW truck tractor by means of a fifth-wheel arrangement: $13.50 flat per registration year or any part thereof, of which $3.50 shall be deposited into the General Revenue Fund.

2. A semitrailer drawn by a GVW truck tractor by means of a fifth-wheel arrangement: $68 flat per permanent registration, of which $18 shall be deposited into the General Revenue Fund.

(b) A motor vehicle equipped with machinery and designed for the exclusive purpose of well drilling, excavation, construction, spraying, or similar activity, and which is not designed or used to transport loads other than the machinery described above over public roads: $44 flat, of which $11.50 shall be deposited into the General Revenue Fund.

(c) A school bus used exclusively to transport pupils to and from school or school or church activities or functions within their own county: $41 flat, of which $11 shall be

deposited into the General Revenue Fund.

(d) A wrecker, as defined in s. 320.01, which is used to tow a vessel as defined in s. 327.02, a disabled, abandoned, stolen-recovered, or impounded motor vehicle as defined in s. 320.01, or a replacement motor vehicle as defined in s. 320.01: $41 flat, of which $11 shall be deposited into the General Revenue Fund.

(e) A wrecker that is used to tow any nondisabled motor vehicle, a vessel, or any other cargo unless used as defined in paragraph (d), as follows:

1. Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: $118 flat, of which $31 shall be deposited into the General Revenue Fund.

2. Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: $177 flat, of which $46 shall be deposited into the General Revenue Fund.

3. Gross vehicle weight of 20,000 pounds or more, but less than 26,000 pounds: $251 flat, of which $65 shall be deposited into the General Revenue Fund.

4. Gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds: $324 flat, of which $84 shall be deposited into the General Revenue Fund.

5. Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: $405 flat, of which $105 shall be deposited into the General Revenue Fund.

6. Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: $772 flat, of which $200 shall be deposited into the General Revenue Fund.

7. Gross vehicle weight of 55,000 pounds or more, but less

than 62,000 pounds: $915 flat, of which $237 shall be deposited into the General Revenue Fund.

8. Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: $1,080 flat, of which $280 shall be deposited into the General Revenue Fund.

9. Gross vehicle weight of 72,000 pounds or more: $1,322 flat, of which $343 shall be deposited into the General Revenue Fund.

(f) A hearse or ambulance: $40.50 flat, of which $10.50 shall be deposited into the General Revenue Fund.

(6) MOTOR VEHICLES FOR HIRE.—

(a) Under nine passengers: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund; plus $1.50 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(b) Nine passengers and over: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund; plus $2 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(7) TRAILERS FOR PRIVATE USE.—

(a) Any trailer weighing 500 pounds or less: $6.75 flat per year or any part thereof, of which $1.75 shall be deposited into the General Revenue Fund.

(b) Net weight over 500 pounds: $3.50 flat, of which $1 shall be deposited into the General Revenue Fund; plus $1 per cwt, of which 25 cents shall be deposited into the General Revenue Fund.

(8) TRAILERS FOR HIRE.—

(a) Net weight under 2,000 pounds: $3.50 flat, of which $1

shall be deposited into the General Revenue Fund; plus $1.50 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(b) Net weight 2,000 pounds or more: $13.50 flat, of which $3.50 shall be deposited into the General Revenue Fund; plus $1.50 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(9) RECREATIONAL VEHICLE-TYPE UNITS.—

(a) A travel trailer or fifth-wheel trailer, as defined by s. 320.01(1)(b), that does not exceed 35 feet in length: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

(b) A camping trailer, as defined by s. 320.01(1)(b)2.: $13.50 flat, of which $3.50 shall be deposited into the General Revenue Fund.

(c) A motor home, as defined by s. 320.01(1)(b)4.:

1. Net weight of less than 4,500 pounds: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

2. Net weight of 4,500 pounds or more: $47.25 flat, of which $12.25 shall be deposited into the General Revenue Fund.

(d) A truck camper as defined by s. 320.01(1)(b)3.:

1. Net weight of less than 4,500 pounds: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

2. Net weight of 4,500 pounds or more: $47.25 flat, of which $12.25 shall be deposited into the General Revenue Fund.

(e) A private motor coach as defined by s. 320.01(1)(b)5.:

1. Net weight of less than 4,500 pounds: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

2. Net weight of 4,500 pounds or more: $47.25 flat, of

which $12.25 shall be deposited into the General Revenue Fund.

(10) PARK TRAILERS; TRAVEL TRAILERS; FIFTH-WHEEL TRAILERS; 35 FEET TO 40 FEET.—

(a) Park trailers.—Any park trailer, as defined in s. 320.01(1)(b)7.: $25 flat.

(b) A travel trailer or fifth-wheel trailer, as defined in s. 320.01(1)(b), that exceeds 35 feet: $25 flat.

(11) MOBILE HOMES.—

(a) A mobile home not exceeding 35 feet in length: $20 flat.

(b) A mobile home over 35 feet in length, but not exceeding 40 feet: $25 flat.

(c) A mobile home over 40 feet in length, but not exceeding 45 feet: $30 flat.

(d) A mobile home over 45 feet in length, but not exceeding 50 feet: $35 flat.

(e) A mobile home over 50 feet in length, but not exceeding 55 feet: $40 flat.

(f) A mobile home over 55 feet in length, but not exceeding 60 feet: $45 flat.

(g) A mobile home over 60 feet in length, but not exceeding 65 feet: $50 flat.

(h) A mobile home over 65 feet in length: $80 flat.

(12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised motor vehicle dealer, independent motor vehicle dealer, marine boat trailer dealer, or mobile home dealer and manufacturer license plate: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund.

(13) EXEMPT OR OFFICIAL LICENSE PLATES.—Any exempt or

official license plate: $4 flat, of which $1 shall be deposited into the General Revenue Fund.

(14) LOCALLY OPERATED MOTOR VEHICLES FOR HIRE.—A motor vehicle for hire operated wholly within a city or within 25 miles thereof: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund; plus $2 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(15) TRANSPORTER.—Any transporter license plate issued to a transporter pursuant to s. 320.133: $101.25 flat, of which $26.25 shall be deposited into the General Revenue Fund.

Section 19. Paragraphs (ee), (eee), (qqq), and (rrr) of subsection (4) and paragraph (a) of subsection (10) of section 320.08056, Florida Statutes, are amended to read:

320.08056 Specialty license plates.—

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

~~(ee) American Red Cross license plate, $25.~~

~~(eee) Donate Organs Pass It On license plate, $25.~~

~~(qqq) St. Johns River license plate, $25.~~

~~(rrr) Hispanic Achievers license plate, $25.~~

(10)(a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1). The fees and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of United States Armed Forces and veterans-related specialty license

plates pursuant to paragraphs (4)(d), (bb), (kk), (iii), and (uuu) ~~(ll), (kkk), and (yyy)~~ and s. 320.0891.

Section 20. Subsections (31), (57), (69), and (70) of section 320.08058, Florida Statutes, are repealed.

Section 21. Paragraph (b) of subsection (4) of section 320.08068, Florida Statutes, is amended to read:

320.08068 Motorcycle specialty license plates.—

(4) A license plate annual use fee of $20 shall be collected for each motorcycle specialty license plate. Annual use fees shall be distributed to The Able Trust as custodial agent. The Able Trust may retain a maximum of 10 percent of the proceeds from the sale of the license plate for administrative costs. The Able Trust shall distribute the remaining funds as follows:

(b) Twenty percent to Preserve Vision ~~Prevent Blindness~~ Florida.

Section 22. Subsection (7) is added to section 320.086, Florida Statutes, to read:

320.086 Ancient or antique motor vehicles; horseless carriage, antique, or historical license plates; former military vehicles.—

(7) For purposes of this section, a trailer is considered a motor vehicle.

Section 23. Section 320.0875, Florida Statutes, is created to read:

320.0875 Purple Heart motorcycle special license plate.—

(1) Upon application to the department and payment of the license tax for the motorcycle as provided in s. 320.08, a resident of this state who owns or leases a motorcycle that is

not used for hire or commercial use shall be issued a Purple Heart motorcycle special license plate if he or she provides documentation acceptable to the department that he or she is a recipient of the Purple Heart medal.

(2) The Purple Heart motorcycle special license plate shall be stamped with the words "Combat-wounded Veteran" followed by the serial number of the license plate. The Purple Heart motorcycle special license plate may have the term "Purple Heart" stamped on the plate and the likeness of the Purple Heart medal appearing on the plate.

Section 24. Paragraph (a) of subsection (1) of section 320.089, Florida Statutes, is amended to read:

320.089 ~~Veterans of the United States Armed Forces; members of National Guard; survivors of Pearl Harbor; Purple Heart medal recipients; active or retired United States Armed Forces reservists; Combat Infantry Badge, Combat Medical Badge, or Combat Action Badge recipients; Combat Action Ribbon recipients; Air Force Combat Action Medal recipients; Distinguished Flying Cross recipients; former prisoners of war; Korean War Veterans; Vietnam War Veterans; Operation Desert Shield Veterans; Operation Desert Storm Veterans; Operation Enduring Freedom Veterans; Operation Iraqi Freedom Veterans; Women Veterans; World War II Veterans; and Navy Submariners;~~ Special license plates for military servicemembers, veterans, and Pearl Harbor survivors~~; fee~~.—

(1)(a) Upon application to the department and payment of the license tax for the vehicle as provided in s. 320.08, a resident of this state who owns or leases ~~Each owner or lessee of~~ an automobile or truck for private use or recreational

vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use, shall be issued a license plate pursuant to the following if the applicant provides the department with proof he or she meets the qualifications listed in this section for the applicable license plate:

1. A person released or discharged from any branch ~~who is a resident of the state and a veteran~~ of the United States Armed Forces shall be issued a license plate stamped with the words "Veteran" or "Woman Veteran" followed by the serial number of the license plate.~~, a Woman Veteran,~~

2. A World War II Veteran shall be issued a license plate stamped with the words "WWII Veteran" followed by the serial number of the license plate.~~,~~

3. A Navy Submariner shall be issued a license plate stamped with the words "Navy Submariner" followed by the serial number of the license plate.~~,~~

4. An active or retired member of the Florida National Guard shall be issued a license plate stamped with the words "National Guard" followed by the serial number of the license plate.

5. A member of the Pearl Harbor Survivors Association or other person on active military duty in Pearl Harbor on December 7, 1941, shall be issued a license plate stamped with the words "Pearl Harbor Survivor" followed by the serial number of the license plate.~~, a survivor of the attack on Pearl Harbor,~~

6. A recipient of the Purple Heart medal shall be issued a license plate stamped with the words "Combat-wounded Veteran" followed by the serial number of the license plate. The Purple Heart plate may have the words "Purple Heart" stamped on the

plate and the likeness of the Purple Heart medal appearing on the plate.~~,~~

7. An active or retired member of any branch of the United States Armed Forces Reserve shall be issued a license plate stamped with the words "U.S. Reserve" followed by the serial number of the license plate.

8. A member of the Combat Infantrymen's Association, Inc., or a recipient of the Combat Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, or Air Force Combat Action Medal shall be issued a license plate stamped with the words "Combat Infantry Badge," "Combat Medical Badge," "Combat Action Badge," "Combat Action Ribbon," or "Air Force Combat Action Medal," as appropriate, and a likeness of the related campaign badge, ribbon, or medal, followed by the serial number of the license plate.

9. A recipient of the~~, or~~ Distinguished Flying Cross shall be issued a license plate stamped with the words "Distinguished Flying Cross" and a likeness of the Distinguished Flying Cross followed by the serial number of the license plate.

10. A recipient of the Bronze Star shall be issued a license plate stamped with the words "Bronze Star" and a likeness of the Bronze Star followed by the serial number of the license plate~~, upon application to the department, accompanied by proof of release or discharge from any branch of the United States Armed Forces, proof of active membership or retired status in the Florida National Guard, proof of membership in the Pearl Harbor Survivors Association or proof of active military duty in Pearl Harbor on December 7, 1941, proof of being a Purple Heart medal recipient, proof of active or retired~~

~~membership in any branch of the United States Armed Forces Reserve, or proof of membership in the Combat Infantrymen's Association, Inc., proof of being a recipient of the Combat Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, Air Force Combat Action Medal, or Distinguished Flying Cross, and upon payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the serial numbers prescribed by s. 320.06, is stamped with the words "Veteran," "Woman Veteran," "WWII Veteran," "Navy Submariner," "National Guard," "Pearl Harbor Survivor," "Combat-wounded veteran," "U.S. Reserve," "Combat Infantry Badge," "Combat Medical Badge," "Combat Action Badge," "Combat Action Ribbon," "Air Force Combat Action Medal," or "Distinguished Flying Cross," as appropriate, and a likeness of the related campaign medal or badge, followed by the serial number of the license plate. Additionally, the Purple Heart plate may have the words "Purple Heart" stamped on the plate and the likeness of the Purple Heart medal appearing on the plate~~.

Section 25. Section 320.133, Florida Statutes, is amended to read:

320.133 Transporter license plates.—

(1) As used in this section, the term "transporter license plate eligible business" means a business that is engaged in the limited operation of an unregistered motor vehicle, or a repossessor that contracts with lending institutions to repossess or recover motor vehicles or mobile homes.

(2) A person is not eligible to purchase or renew a transporter license plate unless he or she provides proof

satisfactory to the department that his or her business is a transporter license plate eligible business.

(3) The application for qualification as a transporter license plate eligible business must be in such form as is prescribed by the department and must contain the legal name of the person or persons applying for the license plate, the name of the business, and the principal or principals of the business. The application must describe the exact physical location of the place of business within the state. This location must be available at all reasonable hours for inspection of the transporter license plate records by the department or any law enforcement agency. The application must contain proof of a garage liability insurance policy, or a business automobile policy, in the amount of at least $100,000. The certificate of insurance must indicate the number of transporter license plates reported to the insurance company. Such coverage shall be maintained for the entire registration period. Upon seeking initial qualification, the applicant must provide documentation proving that the business is registered with the Division of Corporations of the Department of State to conduct business in this state. The business must indicate how it meets the qualification as a transporter license plate eligible business by describing in detail the business processes that require the use of a transporter license plate.

(4)(a) ~~(1)~~ The department may ~~is authorized to~~ issue a transporter license plate to an ~~any~~ applicant who is not a licensed dealer and who is qualified as a transporter license plate eligible business~~, incidental to the conduct of his or her business, engages in the transporting of motor vehicles which~~

~~are not currently registered to any owner and which do not have license plates,~~ upon payment of the license tax imposed by s. 320.08(15) for each transporter ~~such~~ license plate and upon proof of ~~liability~~ insurance as described in subsection (3) ~~coverage in the amount of $100,000 or more~~. The proof of insurance must indicate the number of transporter license plates reported to the insurance company, which shall be the maximum number of transporter license plates issued to the applicant. ~~Such~~ A transporter license plate is valid only for use on an unregistered ~~any~~ motor vehicle in the possession of the transporter while the motor vehicle is being transported in the course of the transporter's business and must not be attached to any vehicle owned by the transporter or his or her business for which registration would otherwise be required. A person who sells or unlawfully possesses, distributes, or brokers a transporter license plate to be attached to any vehicle commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any and all transporter license plates issued are subject to cancellation by the department.

(b) A person who knowingly and willfully sells or unlawfully possesses, distributes, or brokers a transporter license plate to avoid registering a vehicle requiring registration pursuant to this chapter or chapter 319 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and is disqualified from transporter license plate usage. All transporter license plates issued to the person's business shall be canceled and must be returned to the department immediately upon disqualification. The transporter license plate is subject to removal as provided in

subsection (9), and any and all transporter plates issued are subject to cancellation by the department.

(5) A transporter license plate eligible business issued a transporter license plate must maintain for 2 years, at its location, records of each use of each transporter license plate and evidence that the plate was used as required by this chapter. Such records must be open to inspection by the department or its agents or any law enforcement officer during reasonable business hours. A person who fails to maintain true and accurate records of any transporter license plate usage or comply with this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, may be subject to cancellation of any and all transporter license plates issued, and is automatically disqualified from future transporter license plate issuance.

(6) When attached to a motor vehicle, a transporter license plate issued under this section must be accompanied by the registration issued for the transporter license plate by the department and proof of insurance as described in subsection (3). A person who operates a motor vehicle with a transporter license plate attached who fails to provide the documentation listed in this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and the transporter license plate is subject to removal as provided in subsection (9). This subsection does not apply to a person who contracts with dealers and auctions to transport motor vehicles.

(7) ~~(2)~~ A transporter license plate issued pursuant to subsection (4) ~~(1)~~ must be in a distinctive color approved by

the department, and the word "transporter" must appear on the face of the license plate in place of the county name.

(8) ~~(3)~~ An initial registration or renewal ~~A license plate~~ issued under this section is valid for ~~a period of~~ 12 months, beginning January 1 and ending December 31. A ~~No~~ refund of the license tax imposed may not be provided for any unexpired portion of a license period.

(9) A transporter license plate attached to a motor vehicle in violation of subsection (4) or subsection (6) must be immediately removed by a law enforcement officer from the motor vehicle to which it was attached and surrendered to the department by the law enforcement agency for cancellation.

Section 26. Subsections (1) and (2) of section 320.27, Florida Statutes, are amended to read:

320.27 Motor vehicle dealers.—

(1) DEFINITIONS.—The following words, terms, and phrases when used in this section have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(a) "Department" means the Department of Highway Safety and Motor Vehicles.

(b) "Motor vehicle" means any motor vehicle of the type and kind required to be registered and titled under chapter 319 and this chapter, except a recreational vehicle, moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, or mobile home.

(c) "Motor vehicle dealer" means any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or

retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1). Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be a motor vehicle dealer. Any person who engages in possessing, storing, or displaying motor vehicles for retail sale; advertising motor vehicles for retail sale; negotiating with consumers regarding the terms of sale for a motor vehicle; providing test drives of motor vehicles offered for sale; or delivering or arranging for the delivery of a motor vehicle in conjunction with the sale of such motor vehicle is deemed to be dealing in motor vehicles ~~engaged in such business~~. The terms "selling" and "sale" include lease-purchase transactions. A motor vehicle dealer may, at retail or wholesale, sell a recreational vehicle as described in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale of a motor vehicle, provided such acquisition is incidental to the principal business of being a motor vehicle dealer. However, a motor vehicle dealer may not buy a recreational vehicle for the purpose of resale unless licensed as a recreational vehicle dealer pursuant to s. 320.771. A motor vehicle dealer may apply for a certificate of title to a motor vehicle required to be registered under s. 320.08(2)(b), (c), and (d), using a manufacturer's statement of origin as permitted by s. 319.23(1), only if such dealer is authorized by a franchised agreement as defined in s. 320.60(1), to buy, sell, or deal in such vehicle and is authorized by such agreement to perform delivery and preparation obligations and warranty defect adjustments on the

motor vehicle; provided this limitation shall not apply to recreational vehicles, van conversions, or any other motor vehicle manufactured on a truck chassis. The transfer of a motor vehicle by a dealer not meeting these qualifications shall be titled as a used vehicle. The classifications of motor vehicle dealers are defined as follows:

1. "Franchised motor vehicle dealer" means any person who engages in the business of repairing, servicing, buying, selling, or dealing in motor vehicles pursuant to an agreement as defined in s. 320.60(1).

2. "Independent motor vehicle dealer" means any person other than a franchised or wholesale motor vehicle dealer who engages in the business of buying, selling, or dealing in motor vehicles, and who may service and repair motor vehicles.

3. "Wholesale motor vehicle dealer" means any person who engages exclusively in the business of buying, selling, or dealing in motor vehicles at wholesale or with motor vehicle auctions. Such person shall be licensed to do business in this state, shall not sell or auction a vehicle to any person who is not a licensed dealer, and shall not have the privilege of the use of dealer license plates. Any person who buys, sells, or deals in motor vehicles at wholesale or with motor vehicle auctions on behalf of a licensed motor vehicle dealer and as a bona fide employee of such licensed motor vehicle dealer is not required to be licensed as a wholesale motor vehicle dealer. In such cases it shall be prima facie presumed that a bona fide employer-employee relationship exists. A wholesale motor vehicle dealer shall be exempt from the display provisions of this section but shall maintain an office wherein records are kept in

order that those records may be inspected.

4. "Motor vehicle auction" means any person offering motor vehicles or recreational vehicles for sale to the highest bidder where buyers are licensed motor vehicle dealers. Such person shall not sell a vehicle to anyone other than a licensed motor vehicle dealer.

5. "Salvage motor vehicle dealer" means any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.

Notwithstanding anything in this subsection to the contrary, the term "motor vehicle dealer" does not include persons not engaged in the purchase or sale of motor vehicles as a business who are disposing of vehicles acquired for their own use or for use in their business or acquired by foreclosure or by operation of law, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding the provisions of this law; persons engaged in the business of manufacturing, selling, or offering or displaying for sale at wholesale or retail no more than 25 trailers in a 12-month period; public officers while performing their official duties; receivers; trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court; banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business; motor vehicle brokers; persons whose sole dealing in motor vehicles is owning a publication in which, or hosting a website on which, licensed motor vehicle dealers display vehicles for sale; and motor vehicle rental and leasing companies that sell motor vehicles to

motor vehicle dealers licensed under this section. Vehicles owned under circumstances described in this paragraph may be disposed of at retail, wholesale, or auction, unless otherwise restricted. A manufacturer of fire trucks, ambulances, or school buses may sell such vehicles directly to governmental agencies or to persons who contract to perform or provide firefighting, ambulance, or school transportation services exclusively to governmental agencies without processing such sales through dealers if such fire trucks, ambulances, school buses, or similar vehicles are not presently available through motor vehicle dealers licensed by the department.

(d) "Motor vehicle broker" means any person engaged in the business of, or who holds himself or herself out through solicitation, advertisement, or who otherwise holds himself or herself out as being in the business of, ~~offering to procure or procuring motor vehicles for~~ assisting the general public in purchasing or leasing a motor vehicle from a licensed motor vehicle dealer, ~~or who holds himself or herself out through solicitation, advertisement, or otherwise as one who offers to procure or procures motor vehicles for the general public,~~ and who does not deal in motor vehicles as provided in paragraph (1)(c) ~~store, display, or take ownership of any vehicles for the purpose of selling such vehicles~~. Any advertisement or solicitation by a motor vehicle broker must include a statement that the broker is receiving a fee and must clearly state that the person is not a licensed motor vehicle dealer.

(e) "Person" means any natural person, firm, partnership, association, or corporation.

(f) "Bona fide employee" means a person who is employed by

a licensed motor vehicle dealer and receives annually an Internal Revenue Service Form W-2, or an independent contractor who has a written contract with a licensed motor vehicle dealer and receives annually an Internal Revenue Service Form 1099, for the purpose of acting in the capacity of or conducting motor vehicle sales transactions as a motor vehicle dealer.

(2) LICENSE REQUIRED.—No person shall engage in business as, serve in the capacity of, or act as a motor vehicle dealer in this state without first obtaining a license therefor in the appropriate classification as provided in this section. With the exception of transactions with motor vehicle auctions, no person other than a licensed motor vehicle dealer may advertise for sale any motor vehicle belonging to another party unless as a direct result of a bona fide legal proceeding, court order, settlement of an estate, or by operation of law. However, owners of motor vehicles titled in their names may advertise and offer vehicles for sale on their own behalf. It shall be unlawful for a licensed motor vehicle dealer to allow any person other than a bona fide employee to use the motor vehicle dealer license for the purpose of acting in the capacity of or conducting motor vehicle sales transactions as a motor vehicle dealer. Any person acting ~~selling or offering a motor vehicle for sale~~ in violation of the licensing requirements of this subsection, or who misrepresents to any person its relationship with any manufacturer, importer, or distributor, in addition to the penalties provided herein, is ~~shall be~~ deemed to have committed ~~guilty of~~ an unfair and deceptive trade practice in violation of ~~as defined in~~ part II of chapter 501 and is ~~shall be~~ subject to ~~the provisions of~~ subsections (8) and (9).

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Section 27. Section 321.25, Florida Statutes, is amended to read:

321.25 Training provided at patrol schools; reimbursement of tuition and other course expenses.—

(1) The Department of Highway Safety and Motor Vehicles may ~~is authorized to~~ provide for the training of law enforcement officials and individuals in matters relating to the duties, functions, and powers of the Florida Highway Patrol in the schools established by the department for the training of highway patrol candidates and officers. The Department of Highway Safety and Motor Vehicles may ~~is authorized to~~ charge a fee for providing the training authorized by this section. The fee shall be charged to persons attending the training. The fee shall be based on the Department of Highway Safety and Motor Vehicles' costs for providing the training, and such costs may include, but are not limited to, tuition, lodging, and meals. Revenues from the fees shall be used to offset the Department of Highway Safety and Motor Vehicles' costs for providing the training. The cost of training local enforcement officers shall be paid for by their respective offices, counties, or municipalities, as the case may be. Such cost shall be deemed a proper county or municipal expense or a proper expenditure of the office of sheriff.

(2) Notwithstanding s. 943.16, a person who attends training under subsection (1) at the expense of the Department of Highway Safety and Motor Vehicles must remain in the employment or appointment of the Florida Highway Patrol for at least 3 years. Once employed, if the person fails to remain employed by the Florida Highway Patrol for at least 3 years from

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the first date of employment, the person must pay the cost of tuition and other course expenses to the Department of Highway Safety and Motor Vehicles. As used in this section, the term "other course expenses" may include the cost of meals and lodging.

(3) The Department of Highway Safety and Motor Vehicles may institute a civil action to collect the cost of tuition and other course expenses if it is not reimbursed pursuant to subsection (2), provided that the Florida Highway Patrol gave written notification to the person of the 3-year employment commitment during the employment screening process and the person returned signed acknowledgment of receipt of such notification.

(4) Notwithstanding any other provision of this section, the Department of Highway Safety and Motor Vehicles may waive a person's requirement of reimbursement in part or in full when the person terminates employment due to hardship or extenuating circumstances.

Section 28. Subsection (4) of section 322.01, Florida Statutes, is amended to read:

322.01 Definitions.—As used in this chapter:

(4) "Authorized emergency vehicle" means a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized by s. 316.2397 to display red, red and white, or blue lights, and that is on call to respond to emergencies. The term includes, but is not limited to, ambulances, law enforcement vehicles, fire trucks, and other rescue vehicles. The term does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

Section 29. Subsection (4) of section 322.03, Florida Statutes, is amended to read:

322.03 Drivers must be licensed; penalties.—

(4) A person may not operate a motorcycle unless he or she holds a driver license that authorizes such operation, subject to the appropriate restrictions and endorsements. A person may operate an autocycle without a motorcycle endorsement.

Section 30. Subsections (1) and (2) of section 322.032, Florida Statutes, are amended to read

322.032 Digital proof of driver license.—

(1) The department, in collaboration with the Agency for State Technology, shall establish and implement ~~begin to review and prepare for the development of a~~ secure and uniform protocols and standards ~~system~~ for issuing an optional digital proof of driver license and shall procure any application programming interface necessary to enable a private entity to securely manufacture a digital proof of driver license. The department may contract with one or more private entities to develop a digital proof of driver license system.

(2)(a) A ~~The~~ digital proof of driver license ~~developed by the department or by an entity contracted by the department~~ must be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license. The department may adopt rules to ensure valid authentication of a digital proof of driver license ~~licenses~~ by law enforcement.

(b) The act of presenting to a law enforcement officer an electronic device displaying a digital proof of driver license does not constitute consent for the officer to access any information on the device other than the digital proof of driver

license.

(c) A person who presents such device to the officer assumes liability for any resulting damage to the device.

Section 31. Paragraph (e) of subsection (8) of section 322.051, Florida Statutes, is amended to read:

322.051 Identification cards.—

(8)

(e)1. Upon request by a person who has posttraumatic stress disorder, a traumatic brain injury, or a developmental disability, or by a parent or guardian of a child or ward who has posttraumatic stress disorder, a traumatic brain injury, or a developmental disability, the department shall issue an identification card exhibiting a capital "D" for the person, child, or ward if the person or the parent or guardian of the child or ward submits:

a. Payment of an additional $1 fee; and

b. Proof acceptable to the department of a diagnosis by a licensed physician of a developmental disability as defined in s. 393.063, posttraumatic stress disorder, or traumatic brain injury.

2. The department shall deposit the additional $1 fee into the Agency for Persons with Disabilities Operations and Maintenance Trust Fund under s. 20.1971(2).

3. A replacement identification card that includes the designation may be issued without payment of the fee required under s. 322.21(1)(f).

4. The department shall develop rules to facilitate the issuance, requirements, and oversight of posttraumatic stress disorder, traumatic brain injury, and developmental disability

identification cards under this section.

Section 32. Paragraph (m) of subsection (8) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license; requirements for license and identification card forms.—

(8) The application form for an original, renewal, or replacement driver license or identification card must include language permitting the following:

(m) A voluntary contribution of $1 per applicant, which shall be distributed to Preserve Vision ~~Prevent Blindness~~ Florida, a not-for-profit organization, to prevent blindness and preserve the sight of the residents of this state.

A statement providing an explanation of the purpose of the trust funds shall also be included. For the purpose of applying the service charge provided under s. 215.20, contributions received under paragraphs (b)-(t) are not income of a revenue nature.

Section 33. Subsection (5) of section 322.091, Florida Statutes, is amended to read:

322.091 Attendance requirements.—

(5) REPORTING AND ACCOUNTABILITY.—The department shall make available, upon request, a report ~~quarterly~~ to each school district of the legal name, sex, date of birth, and social security number of each student whose driving privileges have been suspended under this section.

Section 34. Subsections (1) and (5) of section 322.12, Florida Statutes, are amended to read:

322.12 Examination of applicants.—

(1) It is the intent of the Legislature that every

applicant for an original driver license in this state be required to pass an examination pursuant to this section. However, the department may waive the knowledge, endorsement, and skills tests for an applicant who is otherwise qualified and who surrenders a valid driver license from another state or a province of Canada, or a valid driver license issued by the United States Armed Forces, if the driver applies for a Florida license of an equal or lesser classification. An ~~Any~~ applicant who fails to pass the initial knowledge test incurs a $10 fee for each subsequent test, to be deposited into the Highway Safety Operating Trust Fund; however, if a subsequent test is administered by the tax collector, the tax collector shall retain the $10 fee, less the General Revenue Service Charge set forth in s. 215.20(1). An ~~Any~~ applicant who fails to pass the initial skills test incurs a $20 fee for each subsequent test, to be deposited into the Highway Safety Operating Trust Fund; however, if a subsequent test is administered by the tax collector, the tax collector shall retain the $20 fee, less the General Revenue Service Charge set forth in s. 215.20(1). A person who seeks to retain a hazardous-materials endorsement, pursuant to s. 322.57(1)(e), must pass the hazardous-materials test, upon surrendering his or her commercial driver license, if the person has not taken and passed the hazardous-materials test within 2 years before applying for a commercial driver license in this state.

(5)(a) The department shall formulate a separate examination for applicants for licenses to operate motorcycles. Any applicant for a driver license who wishes to operate a motorcycle, and who is otherwise qualified, must successfully

complete such an examination, which is in addition to the examination administered under subsection (3). The examination must test the applicant's knowledge of the operation of a motorcycle and of any traffic laws specifically relating thereto and must include an actual demonstration of his or her ability to exercise ordinary and reasonable control in the operation of a motorcycle. Any applicant who fails to pass the initial knowledge examination will incur a $5 fee for each subsequent examination, to be deposited into the Highway Safety Operating Trust Fund. Any applicant who fails to pass the initial skills examination will incur a $10 fee for each subsequent examination, to be deposited into the Highway Safety Operating Trust Fund. In the formulation of the examination, the department shall consider the use of the Motorcycle Operator Skills Test and the Motorcycle in Traffic Test offered by the Motorcycle Safety Foundation. The department shall indicate on the license of any person who successfully completes the examination that the licensee is authorized to operate a motorcycle. If the applicant wishes to be licensed to operate a motorcycle only, he or she need not take the skill or road test required under subsection (3) for the operation of a motor vehicle, and the department shall indicate such a limitation on his or her license as a restriction. Every first-time applicant for licensure to operate a motorcycle must provide proof of completion of a motorcycle safety course, as provided for in s. 322.0255, before the applicant may be licensed to operate a motorcycle.

(b) The department may exempt any applicant from the examination provided in this subsection if the applicant

presents a certificate showing successful completion of a course approved by the department, which course includes a similar examination of the knowledge and skill of the applicant in the operation of a motorcycle.

(c) This subsection does not apply to the operation of an autocycle.

Section 35. Paragraph (d) is added to subsection (1) of section 322.135, Florida Statutes, to read:

322.135 Driver license agents.—

(1) The department shall, upon application, authorize by interagency agreement any or all of the tax collectors who are constitutional officers under s. 1(d), Art. VIII of the State Constitution in the several counties of the state, subject to the requirements of law, in accordance with rules of the department, to serve as its agent for the provision of specified driver license services.

(d) Each tax collector shall provide the same driver license services in office to residents of other counties that it provides for residents of its home county.

Section 36. Paragraph (b) of subsection (1) of section 322.17, Florida Statutes, is amended to read:

322.17 Replacement licenses, identification cards, and permits.—

(1)

(b) In the event that an instruction permit, ~~or~~ driver license, or identification card issued under ~~the provisions of~~ this chapter is stolen, the person to whom the same was issued may, at no charge, obtain a replacement upon furnishing proof satisfactory to the department that such permit, ~~or~~ license, or

identification card was stolen and further furnishing the person's full name, date of birth, sex, residence and mailing address, proof of birth satisfactory to the department, and proof of identity satisfactory to the department.

Section 37. Paragraphs (e) and (i) of subsection (1) and subsection (8) of section 322.21, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

322.21 License fees; procedure for handling and collecting fees.—

(1) Except as otherwise provided herein, the fee for:

(e) A replacement driver license issued pursuant to s. 322.17 is $25. Of this amount, $7 shall be deposited into the Highway Safety Operating Trust Fund and $18 shall be deposited into the General Revenue Fund. ~~Beginning July 1, 2015, or upon completion of the transition of driver license issuance services,~~ If the replacement driver license is issued by the tax collector, the tax collector shall retain the $7 that would otherwise be deposited into the Highway Safety Operating Trust Fund and the remaining revenues shall be deposited into the General Revenue Fund.

~~(i) The specialty driver license or identification card issued pursuant to s. 322.1415 is $25, which is in addition to other fees required in this section. The fee shall be distributed as follows:~~

~~1. Fifty percent shall be distributed as provided in s. 320.08058 to the appropriate state or independent university, professional sports team, or branch of the United States Armed Forces.~~

~~2. Fifty percent shall be distributed to the department for~~

~~costs directly related to the specialty driver license and identification card program and to defray the costs associated with production enhancements and distribution.~~

(8) A ~~Any~~ person who applies for reinstatement following the suspension or revocation of the person's driver license must pay a service fee of $45 following a suspension, and $75 following a revocation, which is in addition to the fee for a license. A ~~Any~~ person who applies for reinstatement of a commercial driver license following the disqualification of the person's privilege to operate a commercial motor vehicle shall pay a service fee of $75, which is in addition to the fee for a license. The department shall collect all of these fees at the time of reinstatement. The department shall issue proper receipts for such fees and shall promptly transmit all funds received by it as follows:

(a) Of the $45 fee received from a licensee for reinstatement following a suspension:

1. If the reinstatement is processed by the department, the department shall deposit $15 in the General Revenue Fund and $30 in the Highway Safety Operating Trust Fund.

2. If the reinstatement is processed by the tax collector, $15, less the General Revenue Service Charge set forth in s. 215.20(1), shall be retained by the tax collector, $15 shall be deposited into the Highway Safety Operating Trust Fund, and $15 shall be deposited into the General Revenue Fund.

(b) Of the $75 fee received from a licensee for reinstatement following a revocation or disqualification:

1. If the reinstatement is processed by the department, the department shall deposit $35 in the General Revenue Fund and $40

in the Highway Safety Operating Trust Fund.

2. If the reinstatement is processed by the tax collector, $20, less the General Revenue Service Charge set forth in s. 215.20(1), shall be retained by the tax collector, $20 shall be deposited into the Highway Safety Operating Trust Fund, and $35 shall be deposited into the General Revenue Fund.

If the revocation or suspension of the driver license was for a violation of s. 316.193, or for refusal to submit to a lawful breath, blood, or urine test, an additional fee of $130 must be charged. However, only one $130 fee may be collected from one person convicted of violations arising out of the same incident. The department shall collect the $130 fee and deposit the fee into the Highway Safety Operating Trust Fund at the time of reinstatement of the person's driver license, but the fee may not be collected if the suspension or revocation is overturned. If the revocation or suspension of the driver license was for a conviction for a violation of s. 817.234(8) or (9) or s. 817.505, an additional fee of $180 is imposed for each offense. The department shall collect and deposit the additional fee into the Highway Safety Operating Trust Fund at the time of reinstatement of the person's driver license.

(10) An applicant who submits an application for a renewal or replacement driver license or identification card to the department using a convenience service shall be provided with an option for expedited shipping whereby the department, at the applicant's request, shall issue the license or identification card within 5 working days after receipt of the application and ship the license or card using an expedited mail service. A fee

shall be charged for the expedited shipping option, not to exceed the cost of the expedited mail service, which is in addition to fees imposed by s. 322.051, this section, or the convenience service. Fees collected for the expedited shipping option shall be deposited into the Highway Safety Operating Trust Fund.

Section 38. Subsection (1) of section 322.61, Florida Statutes, is amended, and subsection (2) of that section is reenacted, to read:

322.61 Disqualification from operating a commercial motor vehicle.—

(1) A person who, for offenses occurring within a 3-year period, is convicted of two of the following serious traffic violations, or any combination thereof, arising in separate incidents committed in a commercial motor vehicle shall, in addition to any other applicable penalties, be disqualified from operating a commercial motor vehicle for a period of 60 days. A holder of a commercial driver license or commercial learner's permit who, for offenses occurring within a 3-year period, is convicted of two of the following serious traffic violations, or any combination thereof, arising in separate incidents committed in a noncommercial motor vehicle shall, in addition to any other applicable penalties, be disqualified from operating a commercial motor vehicle for a period of 60 days if such convictions result in the suspension, revocation, or cancellation of the licenseholder's driving privilege:

(a) A violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a crash resulting in death;

(b) Reckless driving, as defined in s. 316.192;

(c) Unlawful speed of 15 miles per hour or more above the posted speed limit;

(d) Improper lane change, as defined in s. 316.085;

(e) Following too closely, as defined in s. 316.0895;

(f) Texting while driving a commercial motor vehicle, as prohibited by 49 C.F.R. 392.80;

(g) Using a handheld mobile telephone while driving a commercial motor vehicle, as prohibited by 49 C.F.R. 392.82;

(h) ~~(f)~~ Driving a commercial vehicle without obtaining a commercial driver license;

(i) ~~(g)~~ Driving a commercial vehicle without the proper class of commercial driver license or commercial learner's permit or without the proper endorsement; or

(j) ~~(h)~~ Driving a commercial vehicle without a commercial driver license or commercial learner's permit in possession, as required by s. 322.03.

(2)(a) Any person who, for offenses occurring within a 3-year period, is convicted of three serious traffic violations specified in subsection (1) or any combination thereof, arising in separate incidents committed in a commercial motor vehicle shall, in addition to any other applicable penalties, including but not limited to the penalty provided in subsection (1), be disqualified from operating a commercial motor vehicle for a period of 120 days.

(b) A holder of a commercial driver license or commercial learner's permit who, for offenses occurring within a 3-year period, is convicted of three serious traffic violations specified in subsection (1) or any combination thereof arising

in separate incidents committed in a noncommercial motor vehicle shall, in addition to any other applicable penalties, including, but not limited to, the penalty provided in subsection (1), be disqualified from operating a commercial motor vehicle for a period of 120 days if such convictions result in the suspension, revocation, or cancellation of the licenseholder's driving privilege.

Section 39. Section 324.031, Florida Statutes, is amended to read:

324.031 Manner of proving financial responsibility.—The owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) or s. 324.151, which policy is provided by an insurer authorized to do business in this state ~~issued by an insurance carrier~~ which is a member of the Florida Insurance Guaranty Association or is an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation of the Financial Services Commission. The operator or owner of any other vehicle may prove his or her financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in ss. 324.021(8) and 324.151;

(2) Furnishing a certificate of self-insurance showing a deposit of cash in accordance with s. 324.161; or

(3) Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

Any person, including any firm, partnership, association, corporation, or other person, other than a natural person, electing to use the method of proof specified in subsection (2) shall furnish a certificate of deposit equal to the number of vehicles owned times $30,000, to a maximum of $120,000; in addition, any such person, other than a natural person, shall maintain insurance providing coverage in excess of limits of $10,000/20,000/10,000 or $30,000 combined single limits, and such excess insurance shall provide minimum limits of $100,000/$300,000 ~~$125,000/250,000~~ /50,000 or $300,000 combined single limits. These increased limits shall not affect the requirements for proving financial responsibility under s. 324.032(1).

Section 40. Section 877.27, Florida Statutes, is amended to read:

877.27 Unauthorized transmissions to, or interference with, a public or commercial radio station licensed by the Federal Communications Commission or global positioning system prohibited; penalties.—

(1) A person may not:

(a) Make, or cause to be made, a radio transmission in this state unless the person obtains a license or an exemption from licensure from the Federal Communications Commission under 47 U.S.C. s. 301, or other applicable federal law or regulation; or

(b) Do any act, whether direct or indirect, to cause an unlicensed radio transmission to, or interference with, a public or commercial radio station licensed by the Federal Communications Commission or to enable the radio transmission or

interference to occur.

(c) Use a device prohibited by the Federal Communications Commission which would cause interference with the legal use of a global positioning system (GPS) to track vehicles.

(2) A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 41. Paragraph (c) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

1. When a motor vehicle is leased or rented for a period of less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped

off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s. 316.003(13)(a) ~~s. 316.003(12)(a)~~ to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with the provisions of s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 42. Subsection (1) of section 316.303, Florida Statutes, is amended to read:

316.303 Television receivers.—

(1) No motor vehicle may be operated on the highways of this state if the vehicle is actively displaying moving television broadcast or pre-recorded video entertainment content that is visible from the driver's seat while the vehicle is in

motion, unless the vehicle is equipped with autonomous technology, as defined in s. 316.003(3) ~~s. 316.003(2)~~, and is being operated in autonomous mode, as provided in s. 316.85(2).

Section 43. Paragraph (b) of subsection (2) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(2)

(b) The officer or inspector shall inspect the license plate or registration certificate of the commercial vehicle to determine whether its gross weight is in compliance with the declared gross vehicle weight. If its gross weight exceeds the declared weight, the penalty shall be 5 cents per pound on the difference between such weights. In those cases when the commercial vehicle is being operated over the highways of the state with an expired registration or with no registration from this or any other jurisdiction or is not registered under the applicable provisions of chapter 320, the penalty herein shall apply on the basis of 5 cents per pound on that scaled weight which exceeds 35,000 pounds on laden truck tractor-semitrailer combinations or tandem trailer truck combinations, 10,000 pounds on laden straight trucks or straight truck-trailer combinations, or 10,000 pounds on any unladen commercial motor vehicle. A driver of a commercial motor vehicle entering the state at a designated port-of-entry location, as defined in s. 316.003 ~~s. 316.003(54)~~, or operating on designated routes to a port-of-entry location, who obtains a temporary registration permit shall be assessed a penalty limited to the difference between its gross weight and the declared gross vehicle weight at 5

cents per pound. If the license plate or registration has not been expired for more than 90 days, the penalty imposed under this paragraph may not exceed $1,000. In the case of special mobile equipment, which qualifies for the license tax provided for in s. 320.08(5)(b), being operated on the highways of the state with an expired registration or otherwise not properly registered under the applicable provisions of chapter 320, a penalty of $75 shall apply in addition to any other penalty which may apply in accordance with this chapter. A vehicle found in violation of this section may be detained until the owner or operator produces evidence that the vehicle has been properly registered. Any costs incurred by the retention of the vehicle shall be the sole responsibility of the owner. A person who has been assessed a penalty pursuant to this paragraph for failure to have a valid vehicle registration certificate pursuant to the provisions of chapter 320 is not subject to the delinquent fee authorized in s. 320.07 if such person obtains a valid registration certificate within 10 working days after such penalty was assessed.

Section 44. Paragraph (a) of subsection (2) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(2) As used in this section, the term "motor vehicle" means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:

(a) A school bus as defined in s. 316.003 ~~s. 316.003(68)~~.

Section 45. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(78)(a) or (b) ~~s. 316.003(77)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 46. The amendments made by this act to s. 318.18, Florida Statutes, shall apply upon the adoption by rule of uniform traffic citation forms. The Department of Highway Safety and Motor Vehicles shall notify the Division of Law Revision and Information upon the adoption of such forms.

Section 47. Except as otherwise provided in this act, 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/SB 784
INTRODUCER:	Transportation Committee and Senator Gainer and others
SUBJECT:	Department of Highway Safety and Motor Vehicles
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	**Fav/CS**
2.	Wells	Pitts	ATD	**Recommend: Fav/CS**
3.	Wells	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 784 makes numerous changes relating to the Department of Highway Safety and Motor Vehicles (DHSMV). Specifically, the bill:

- Creates a definition of an autocycle, requires occupants of autocycles to wear safety belts, and exempts drivers of autocycles from being required to have a motorcycle endorsement or motorcycles license, or from completing motorcycle knowledge and skills testing in order to operate the autocycle;
- Allows volunteer firefighters to use red and white, in addition to red, warning signals;
- Updates various commercial motor vehicle (CMV) regulations to address compatibility issues with federal law;
- Requires interstate charter buses to register as apportionable vehicles;
- Changes references to the organization "Prevent Blindness Florida" to "Preserve Vision Florida";
- Increases the time-frame apportionable vehicles must replace their license plates from annually to every five years;
- Allows a person driving a rental vehicle who is stopped by a law enforcement officer or agent of the DHSMV to show an electronic copy of a rental agreement;
- Removes specialty license plates from statute that have been discontinued by the DHSMV;
- Creates a Purple Heart motorcycle license plate and a Bronze Star license plate;
- Makes numerous changes to transporter license plates, including requiring more information from applicants for transporter plates and adding penalties for the misuse of such plates;

- Allows a person diagnosed with posttraumatic stress disorder (PTSD) or traumatic brain injury (TBI) to be eligible to receive a "D" designation on his or her identification (ID) card;
- Increases the amount of time a Florida Highway Patrol (FHP) trooper must stay employed with the FHP to avoid having to reimburse training costs from two years to three years;
- Revises DHSMV reporting requirements relating to driver license suspensions for persons who do not meet school attendance requirements;
- Authorizes tax collectors to retain fees or a portion of fees when they administer subsequent driver license examinations or reinstate licenses;
- Allows the DHSMV to issue a no-fee replacement identification card upon proof to the DHSMV that the card was stolen;
- Provides the option for expedited shipping of a driver license or identification card;
- Removes an obsolete provision relating to specialty driver licenses; and
- Amends numerous cross-references to reflect changes made by the bill.

The bill is intended to address a broad range of federal compliance, customer service and administrative efficiency issues; however, these changes have various indeterminate impacts on state revenues and expenditures.

The Revenue Estimating Conference (REC) reviewed identical sections of the bill on March 10, 2017.1 The REC estimates that replacing stolen identification cards at no charge to a customer (section 10 of the bill) will have an insignificant negative impact to the General Revenue Fund until Fiscal Years 2020 through 2022, when it will have a negative impact of $100,000 annually.

The REC estimates that allowing local tax collectors to retain fees or portions of fees for administering subsequent driver license examinations or reinstating licenses (sections 9 and 11) will shift approximately $5 million from the Highway Safety Operating Trust Fund and $400,000 from the General Revenue Fund each year to the local tax collectors.

Additionally, the REC estimates, authorizing expedited shipping fees for driver licenses and identification cards (section 11) will have an indeterminate impact in revenues to the extent that expedited shipping is requested.

The bill takes effect October 1, 2017.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of the Proposed Changes.

[1] Office of Economic and Demographic Research, Revenue Estimating Conference, *Highway Safety Fees – HB 545* (Mar. 10, 2017), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0310.pdf at p. 22-30 (last visited Mar. 15, 2017).

III. Effect of Proposed Changes:

Autocycles (Sections 1, 6, 7, 20, and 24)

Present Situation

An autocycle is commonly defined as a three-wheel motorcycle that has a steering wheel and seating that does not require the operator to straddle or sit astride it.[2] The term "autocycle" is not defined in federal law; however, as of February 2016, at least 22 states have created statutory definitions for an autocycle.[3] Currently, the DHSMV registers autocycles as motorcycles.[4] This means operators of autocycles, generally, are not required to maintain insurance[5] or wear safety belts[6], but are required to:

- Maintain a motorcycle endorsement or motorcycle license;[7]
- Wear a helmet, unless over 21 years of age with at least $10,000 of medical insurance or riding in an enclosed cab;[8] and
- Wear eye protection[9];

Since autocycles share more characteristics with passenger motor vehicles than motorcycles, some of the motorcycle requirements, or lack of requirements, may or may not be necessary for autocycles. For example, studies suggest a motorcycle endorsement or motorcycle license should not be required for operating an autocycle.[10] Motorcycle rider courses primarily focus on operating a motorcycle in which the operator sits astride the saddle and uses handlebars, while using his or her body weight, balance, and position on the motorcycle to corner or stop; however, operating an autocycle requires mechanics similar to a passenger motor vehicle. At least 21 states do not require a motorcycle endorsement or motorcycle license to operate an autocycle.[11]

There is little research or crash data available concerning the safety of autocycles. Since autocycles fall under the definition of a motorcycle they are only required to meet the federal safety standards required for motorcycles; thus, autocycles are not required to meet the crash safety standards or occupant safety criteria that a regular passenger motor vehicle is required to meet. The National Highway Traffic Safety Administration (NHTSA) has concerns that the overall appearance of autocycles, being closer to the appearance of a car than a motorcycle, may cause people to think autocycles are as safe as passenger motor vehicles.[12]

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[2] American Association of Motor Vehicle Administrators (AAMVA), *Best Practices for the Regulation of Three-Wheel Vehicles* (October 2013), *available at* http://www.aamva.org/3wheelvehiclebp/ at p. 4 (last visited Mar. 22, 2017).
[3] National Conference of State Legislatures (NCSL), *Traffic Safety Trends – State Legislative Action 2015* (Feb. 2016), *available at* http://www.ncsl.org/Documents/transportation/2015_Traffic_Safety_Trends.pdf at p. 23 (last visited Mar. 22, 2017).
[4] DHSMV Technical Advisory RS/TL16-015, *Registering the Slingshot* (June 20, 2016), *available at* https://www.flhsmv.gov/dmv/bulletins/2016/ta_rstl16-015.pdf
[5] See ch. 324, F.S., on Motor Vehicle Financial Responsibility.
[6] See s. 316.614(3)(a)5., F.S.
[7] Section 322.03(4), F.S.
[8] Section 316.211, F.S.
[9] Section 316.211(2), F.S.
[10] AAMVA, *supra* note 1 at p. 5 and 9
[11] NCSL, *supra* note 2
[12] AAMVA, *supra* note 2 at p. 2

Effect of Proposed Changes

Section 1 amends s. 316.003, F.S., defining an autocycle as a three-wheel motorcycle that has two wheels in the front and one wheel in the back, is equipped with a roll cage or roll hoops, safety belts for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it and is manufactured by a National Highway Traffic Safety Administration (NHTSA) registered manufacturer in accordance with the applicable federal motorcycle safety standards.

Sections 1 and 7 include an autocycle in the definition of a motorcycle. Also, the definition of motorcycle is amended to exempt a vehicle in which the operator is enclosed by a cabin unless the vehicle meets the requirements set forth by the NHTSA for a motorcycle.

Section 6 amends s. 316.614, F.S., to require that the operator, front seat passenger, and any passenger under the age of 18 years old in an autocycle wear a safety belt.

Sections 20 and 24 amend ss. 322.03 and 322.12, F.S., respectively, to exempt operators of an autocycle from needing a motorcycle endorsement or motorcycle license, and from needing to complete motorcycle skills and motorcycle knowledge testing to operate an autocycle.

Volunteer Firefighters – Red and White Warning Signals (Sections 2, 3, and 19)

Present Situation

Section 316.2397, F.S., authorizes vehicles of the fire department and fire patrol, including vehicles of permitted volunteer firefighters, to show or display red warning signals. Specifically, active volunteer firefighters are authorized to display such red lights or warning signals if the volunteer firefighter has secured a written permit from the chief executive officers of the firefighting organization allowing the use of such signals. This permit is required to be carried at all times while the firefighter displays the red warning signals. The active firefighter may display red lights on their privately owned vehicle while en route to a fire or other emergency in the line of duty, or while en route to the fire station for the purpose of proceeding to a fire or other emergency.[13]

Section 316.2398, F.S., requires that the warning signals must be visible from the front and rear of the vehicle, and requires:

- No more than two red warning signals may be displayed; and
- No inscription of any kind may appear across the face of the lens of the warning signal.

A violation of these requirements is a nonmoving violation, punishable as provided in ch. 318, F.S.,[14] and any volunteer firefighter who violates these requirements shall be dismissed from membership in the firefighting organization.[15]

[13] Section 316.2398(1), F.S.
[14] Chapter 318.18, F.S., provides that a nonmoving traffic violation is a $30 penalty plus court costs. This could result in a penalty and costs totaling up to $108.
[15] Section 316.2398(5), F.S.

Effect of Proposed Changes

Sections 2, 3, and 19 amend ss. 316.2397, 316.2398, and 322.01, F.S., respectively, to provide that volunteer firefighters may use red or *red and white* warning signals where provided by law. All of the conditions and restrictions in current law for the use of red warning signals will remain applicable to the use of red and white warning signals.

Federal Motor Carrier Safety Administration Compatibility (Section 4)

Present Situation

The Federal Motor Carrier Safety Administration (FMCSA) was established within the United States Department of Transportation on January 1, 2000. Its primary mission is to prevent commercial motor vehicle (CMV)-related fatalities and injuries.[16]

Section 316.302, F.S., provides that all owners and drivers of CMVs[17] operated on the public highways of this state while engaged in *interstate* commerce are subject to the rules and regulations contained in the following parts of the Federal Motor Carrier Safety Regulations[18]:

- Part 382, Controlled Substance and Alcohol Use and Testing;
- Part 385, Safety Fitness Procedures;
- Part 390, General Federal Motor Carrier Safety Regulations;
- Part 391, Qualifications of Drivers;
- Part 392, Driving of Commercial Motor Vehicles;
- Part 393, Parts and Accessories Necessary for Safe Operation;
- Part 395, Hours of Service of Drivers;
- Part 396, Inspection, Repair, and Maintenance; and
- Part 397, Transportation of Hazardous Materials; Driving and Parking Rules.

Owners and drivers of CMVs engaged in *intrastate* commerce are subject to the same rules and regulations, unless otherwise provided in s. 316.302, F.S., as such rules and regulations existed on December 31, 2012.[19] To remain compatible with the Federal Motor Carrier Safety Regulations, states generally have up to three years from the effective date of new federal requirements to adopt and enforce such requirements.[20] States that remain incompatible risk losing federal funding. A 2007 Florida State Motor Carrier Safety Assistance Program (MCSAP) review found that the Florida Statutes contain multiple compatibility issues.[21]

[16] FMCSA website, *About Us, available at* https://www.fmcsa.dot.gov/mission/about-us (last visited Feb. 23, 2017).
[17] Section 316.003(12), F.S., defines "commercial motor vehicle" as "any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle: (a) Has a gross vehicle weight rating of 10,000 pounds or more; (b) Is designed to transport more than 15 passengers, including the driver; or (c) Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended (49 U.S.C. ss. 1801 et seq.)."
[18] 49 C.F.R. ch. III, subchapter B.
[19] Section 316.302(1)(b), F.S.
[20] 49 C.F.R. *Appendix A to Part 355 – Guidelines for the Regulatory Review – State Determinations* (2016)
[21] 2007 Florida State MCSAP Review, *Summary Findings, Recommendations, and Noteworthy Practices* (June 2007) (on file with the Senate Committee on Transportation).

2007 Florida State MCSAP Review Findings

Section 316.302(1)(b), F.S., provides an exception from 49 C.F.R. s. 390.5 as it relates to the definition of a bus, which is defined as "any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs." Florida law excludes taxicabs from the definition of a bus.[22] The MCSAP Review noted that Florida Statutes "exempting, from the definition of a bus, taxicabs as it applies to the intrastate private transportation of passengers, is not compatible" with Federal law.[23]

Federal law prohibits certain lamps and reflective devices from being obscured on CMVs.[24] However, s. 316.215(5), F.S., provides an exception from this requirement for front-end loading collection vehicles that are engaged in collecting solid waste or recyclable or recovered materials, and are being operated at less than 20 miles per hour with hazard-warning lights activated. According to the MCSAP review, federal law provides no such exemption.[25]

Section 316.302(2)(d), F.S., provides an exemption from compliance with 49 C.F.R. s. 395.8, requiring driver's record of duty status, for drivers of CMVs if the driver:

- Is operating solely in intrastate commerce;
- Is not transporting any hazardous materials in amounts that require placarding[26];
- Is within 150-air miles of the vehicle's base location; and
- Complies with specific federal requirements relating to hours of service.[27]

Additionally, state law provides that if a driver is not released from duty within 12 hours of arriving on duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period. The MCSAP review found that the exemption and alternate records requirement contained in s. 316.302(2)(d), F.S., does not comply with federal regulations because the federal exemption also requires that the driver return to the work reporting location and is released from work within 12 consecutive hours.[28]

Federal law allows a state to exempt a CMV from all or part of its laws or regulations relating to intrastate commerce if the vehicle's gross vehicle weight, gross vehicle weight rating, gross combined weight, or gross combined weight rating is less than 26,001, and the vehicle is not:

- Transporting hazardous materials requiring a placard; or
- Designed or used to transport 16 or more people, including the driver.[29]

However, s. 316.302(2)(f), F.S., provides exemptions from federal laws or regulations for a person who operates a CMV solely in intrastate commerce, having a *declared* gross vehicle weight of less than 26,001 pounds, and who is not transporting hazardous materials in an amount that requires placarding, or who is transporting petroleum products. According to the MCSAP

[22] Section 316.003(6), F.S.
[23] 2007 Florida State MCSAP Review, *supra* note 20 at p. 2, *FL/FI-1*.
[24] 49 C.F.R. s. 393.9(b)
[25] 2007 Florida State MCSAP Review, *supra* note 20 at p. 4, *FL/FI-7*.
[26] Pursuant to 49 C.F.R. part 172
[27] As provided in 49 C.F.R. s. 395.1(e)(1)(iii) and (v).
[28] 2007 Florida State MCSAP Review, *supra* note 20 at p. 5, *FL/FI-8*.
[29] 49 C.F.R. s. 350.341(a)

Review, the State interprets this statute as exempting such vehicles transporting petroleum products even if a hazardous materials placard is required, which is not in compliance with federal regulations.[30]

Maximum Driving Time

Section 316.302(2), F.S., provides prohibitions to length of time CMV drivers may drive, as well as exemptions from federal requirements for specified vehicles. Section 316.302(2)(b), F.S., provides that a person who operates a CMV solely in intrastate commerce without any hazardous materials in amounts requiring placarding may not drive:

- More than 12 hours following 10 consecutive hours off duty; or
- For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty.

Except as provided in the federal hours of service rules[31], a person operating a CMV solely in intrastate commerce not transporting any hazardous material may not drive after having been on duty more than 70 hours in any period of seven consecutive days or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week.[32] Upon request of DHSMV, motor carriers are required to furnish time records or other written verification so that DHSMV can determine compliance with the hours of service requirements. Falsification of time records is subject to a civil penalty not to exceed $100.[33]

Effect of Proposed Changes

Section 4 amends multiple provisions in s. 316.302, F.S., addressing federal compatibility issues.

This section amends s. 316.302(1), F.S., to clarify that the section applies to all CMVs except as provided in s. 316.302(3), F.S., relating to covered farm vehicles.

This section amends s. 316.302(1)(b), F.S., to remove an exception to federal law as it relates to the definition of a bus.

This section adopts federal laws that intrastate CMV owners and drivers are required to comply with as such federal rules and regulations existed on December 31, 2016.[34] Examples of some of the regulations adopted that directly affect intrastate CMVs include:

- Requiring use of electronic logging devices by drivers required to prepare hours-of-service records of duty status;[35]

[30] 2007 Florida State MCSAP Review, *supra* note 20 at p. 5, *FL/FI-3*.
[31] 49 C.F.R. s. 395.1
[32] Section 316.302(2)(c), F.S.
[33] This penalty is found in 316.302(2)(c), F.S.; However, s. 316.3025, F.S., relating to CMV penalties, provides that a penalty of $100 may be assessed for a violation of s. 316.302(2)(b) or (c), F.S.
[34] A list of Final Rules adopted as of December 31, 2016, that affect FMCSA rules and regulations are available on the FMCSA website, *Rulemaking Documents, available at* https://www.fmcsa.dot.gov/regulations/search/rulemaking?keyword=&dt=final&topic= (last visited Mar. 13, 2017).
[35] Electronic Logging Devices and Hours of Service Supporting Documents, 80 Fed. Reg. 78291 (Dec. 16, 2015), *available at* https://www.federalregister.gov/documents/2015/12/16/2015-31336/electronic-logging-devices-and-hours-of-service-supporting-documents (last visited Mar. 6, 2017).

- Amending the definition of *gross combination weight rating* to provide clarification;[36] and
- Requiring the use of a Unified Registration System to submit required registration and biennial update information to the FMCSA.[37]

This section amends s. 316.302(1)(d), F.S., to remove an exemption from federal law allowing specified CMVs to obscure certain lighting or reflective devices.

Due to changes in federal law, the section amends s. 316.302(2)(a), F.S., to provide clarity that drivers of intrastate CMVs that are not transporting hazardous materials requiring placarding are exempt from 49 C.F.R. s. 395.3, which provides maximum driving times for property-carrying vehicles. These drivers continue to be subject to the maximum driving times required by state law.

This removes a duplicate penalty for falsifying hours of service records from s. 316.302(2)(c), F.S.

Section 316.302(2)(d), F.S., is amended to provide that to be exempt from being required to maintain records of duty status for short-haul drivers the driver must also return to the work reporting location and be released from work within 12 consecutive hours.

Lastly, the section amends s. 316.302(2)(f), F.S., to remove specified exemptions for drivers transporting petroleum products. The section also removes that these exemptions apply when a CMV has a *declared* gross vehicle weight of less than 26,001 pounds. This criterion is changed to CMVs having a *gross vehicle weight*, *gross vehicle weight rating*, *and gross combined weight rating* of less than 26,001 pounds.

Commercial Motor Vehicle Operator Disqualifications (Sections 5 and 27)

Present Situation

Federal and state laws prohibit drivers of commercial motor vehicles from texting while driving a commercial motor vehicle (CMV) and from using a hand-held mobile telephone while driving a CMV.[38] Section 316.3025, F.S., provides that a driver who violates these laws may be assessed a civil penalty of:

- $500 for the first violation;
- $1,000 and a 60-day CDL disqualification for a second violation; and
- $2,750 and a 120-day CDL disqualification for a third and subsequent violation.

However, federal law requires the 60 and 120-day CDL disqualification for these offenses to be assessed for any combination of certain serious traffic violations during a 3-year period.

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[36] Gross Combination Weight Rating; Definition, 79 Fed. Reg. 15245 (Mar. 19, 2014), *available at* https://www.federalregister.gov/documents/2014/03/19/2014-05502/gross-combination-weight-rating-definition (last visited Mar. 13, 2017).

[37] Unified Registration System, 78 Fed. Reg. 52607 (Aug. 23, 2013), *available at* https://www.federalregister.gov/documents/2013/08/23/2013-20446/unified-registration-system (last visited Mar. 13, 2017). However, the system is currently delayed until all necessary data is transferred to the new database and that is compatible with State partners. See 82 Fed. Reg. 5292.

[38] See 49 C.F.R. ss. 392.80 and 392.82, and s. 316.3025, F.S.

Specifically, federal law requires, for offenses occurring within a 3-year period while operating a CMV, a 60-day CDL disqualification for a second conviction and a 120-day CDL disqualification for a third or subsequent conviction of any combination of the following offenses[39]:

- Excessive speeding (15 mph or more over the posted speed limit);
- Reckless driving;
- Improper lane changes;
- Following too closely;
- A violation of any state or local law relating to motor vehicle traffic control arising in connection with a fatal accident;
- Driving a CMV:
  - Without obtaining a CDL;
  - Without a CDL in the driver's possession;
  - Without the proper class of CDL or endorsements required;
- Violating a state or local law or ordinance on motor vehicle traffic control prohibiting:
  - Texting while driving a CMV; or
  - Use of a hand-held mobile telephone while driving a CMV.

With the exception of texting while driving a CMV and the use of a hand-held mobile phone while driving a CMV, the above penalties and offenses are in state law.[40] To align with federal law, these two offenses need to be added to the list of disqualifying offenses in s. 316.3025, F.S. According to the DHSMV, non-compliance could result in a loss of federal highway funds.[41]

Effect of Proposed Changes

Sections 5 and 27 amend ss. 316.3025 and 322.61, F.S., respectively, to remove the commercial driver license disqualification penalty for texting while driving a CMV and using a hand-held mobile telephone while driving a CMV from s. 316.3025, and adds those offenses to the list of serious disqualifying offenses while operating a commercial motor vehicle listed in s. 322.61, F.S. This change aligns Florida law with federal regulations.

International Registration Plan – Charter Buses (Section 7)

Present Situation

The International Registration Plan (IRP) is a registration reciprocity agreement among all states in the contiguous United States, the District of Columbia, and several Canadian provinces. It provides for the payment of license fees based on fleet operation in various member jurisdictions.[42] This allows carriers to operate inter-jurisdictionally while only needing to register

[39] 49 C.F.R. s. 383.51 (2015), *Table 2, available at* https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-subtitleB-chapIII-subchapB.pdf at p. 206-207 (last visited Feb 9, 2017).
[40] See s. 322.61(1), F.S.
[41] Meeting with the DHSMV and Senate Transportation Committee Staff (Jan. 23, 2017).
[42] International Registration Plan, Inc., *About IRP*, http://www.irponline.org/?page=AboutIRP (last visited Feb. 1, 2017).

its vehicles in its base jurisdiction, which is the state or province where the registrant has an established place of business[43].

All apportionable vehicles domiciled in the state are required to be registered in accordance with the IRP and display "Apportioned" license plates.[44] Motor carriers registered under the IRP are also required to maintain specified records for the DHSMV, and may have their registrations and license plates withheld if:[45]

- An identifying number issued by the federal agency responsible for motor carrier safety is not provided for the motor carrier and entity responsible for motor carrier safety for each motor vehicle; or
- A motor carrier or vehicle owner has been prohibited from operating by a federal or state agency responsible for motor carrier safety.

Additionally, the DHSMV has authority to suspend, with notice, any commercial motor vehicle or license plate issued to a motor carrier or vehicle owner who has been prohibited from operating by a federal or state agency responsible for motor carrier safety.[46] Apportionable vehicles that do not regularly operate in a particular jurisdiction also have the option to register for trip permits in order to operate in IRP member jurisdictions for limited periods where they do not pay license taxes.[47]

The IRP defines an apportionable vehicle as:[48]

> [A]ny Power Unit that is used or intended for use in two or more Member Jurisdictions and that is used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property, and:
> (i) Has two Axles and a gross Vehicle weight or registered gross Vehicle weight in excess of 26,000 pounds, or
> (ii) Has three or more Axles, regardless of weight, or
> (iii) Is used in combination, when the gross Vehicle weight of such combination exceeds 26,000 pounds.

The definition excludes a recreational vehicle, a vehicle displaying restricted plates, or a government-owned vehicle. However, those excluded vehicles may choose to register under the IRP.

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[43] As defined by the IRP, (January 2017) *available at* http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/publications/IRP_agreement_eff_january_1_.pdf at p. 16 (last visited Feb. 1, 2017).
[44] Section 320.0715(1), F.S.
[45] Section 320.0715(4), F.S.
[46] Section 320.0715(4)(c), F.S.
[47] *See* IRP, Inc., *Trip Permits- Cost/Duration* (May 2016), *available at* http://www.irponline.org/resource/resmgr/Jurisdiction_Info_2/Trip_Permits_5.19.2016.xlsx (last visited Feb. 6, 2017).
[48] International Registration Plan (Jan. 2017), *available at* http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/publications/IRP_agreement_eff_january_1_.pdf at p. 12-13 (last visited Feb. 2, 2017).

Prior to January 1, 2016, charter buses were also excluded from having to register under the IRP, but retained the option to do so. The IRP was amended to remove charter buses from the exemption, requiring charter bus operations to register under the IRP. This registration ensures that charter bus operations will pay license fees to each jurisdiction it operates in, and prevents or suspends the registration of unsafe carriers.[49] As of January 1, 2016, the DHSMV estimates that less than 200 charter bus carriers or companies within the state were required to register under the IRP in order for the state to remain compliant with the reciprocity agreement.[50]

Effect of Proposed Changes

Section 7 amends s. 320.01, F.S., to remove charter buses from the apportionable vehicle exclusion. This change is necessary to align with the requirements of the IRP. All charter buses operating interstate are now required to obtain an IRP registration or purchase trip permits.

Prevent Blindness Florida Organization Name Change (Sections 8, 14 and 22)

Present Situation

In May of 2016, the organization Prevent Blindness Florida changed their name to Preserve Vision Florida.[51]

Effect of Proposed Changes

Sections 8, 14 and 22 amend ss. 320.02, 320.08068 and 322.08, F.S., respectively, pertaining to the DHSMV to recognize the organization's name change.

Issuance of Apportionable Vehicle Plates (Sections 9 and 11)

Present Situation

Registration license plates, which bear a graphic symbol and alphanumeric system of identification, are issued for a 10-year period. However, "Apportioned" license plates issued to vehicles registered under the International Registration Plan (IRP), are issued annually.[52] Each original plate costs $28, which is deposited into the Highway Safety Operating Trust Fund (HSOTF). Apportioned vehicles are also issued an annual cab card that denotes the declared gross vehicle weight for each apportioned jurisdiction where the vehicle is authorized to operate.[53]

[49] *See* IRP, Inc., *Official Amendment to the International Registration Plan* (June 2014) http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/irp_ballots/ballot_391.pdf (last visited Feb. 3, 2017).
[50] Email from the DHSMV (Feb. 17, 2017) (on file with the Senate Committee on Transportation).
[51] Department of State, Division of Corporations – Sunbiz.org, *Preserve Vision Florida, Inc.* (May 4, 2016), http://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2016%5C0509%5C84865905.Tif&documentNumber=706503 (last visited Mar. 22, 2017).
[52] Section 320.06(1)(b)1., F.S.
[53] *See* IRP, Inc., *State of Florida Apportioned Cab Card Sample*, http://c.ymcdn.com/sites/www.irponline.org/resource/resmgr/cab_cards/fl_cc_sample.pdf (last visited Feb. 8, 2017).

Effect of Proposed Changes

Sections 9 and 11 amend ss. 320.06 and 320.0607, F.S., respectively, to provide that beginning October 1, 2018, apportioned vehicles will be issued license plates valid for a 5-year period, instead of annually. If the license plate is damaged or worn prior to the end of the 5-year period, the DHSMV will replace it, upon application and surrender of the current plate, at no charge. Cab cards and validation stickers will continue to be issued annually, and the $28 annual fee will apply to the issuance of an original or renewal validation sticker, instead of for the cost of the plate.

Electronic Rental Agreements (Section 10)

Present Situation

Section 320.0605, F.S., provides that a person who rents or leases a vehicle is required to possess a true copy of rental or lease documentation for the motor vehicle at all times while the vehicle is being operated.[54] The documentation must include the following:

- Date of rental and time of exit from rental facility;
- Rental station identification;
- Rental agreement number;
- Rental vehicle identification number;
- Rental vehicle license plate number and state of registration;
- Vehicle's make, model, and color;
- Vehicle's mileage; and
- Authorized renter's name.

Effect of Proposed Changes

The bill authorizes a person to possess an *electronic copy* of the rental or lease documentation to be displayed upon the request of a law enforcement officer or an agent of the DHSMV. The bill provides that displaying the electronic copy does not constitute consent for the officer or agent to access any information on the device other than the displayed rental or lease documentation. The person who presents the device to the officer assumes liability for any resulting damage to the device.

The bill also removes that the rental or lease documentation must include the time of exit from the rental facility.

Discontinued Specialty License Plates (Sections 12 and 13)

Present Situation

The DHSMV must discontinue the issuance of any approved specialty license plate if the number of valid specialty plate registrations falls below 1,000 plates for at least 12 consecutive months, or discontinue the sale of presale vouchers if the approved plate does not sell at least 1,000

[54] A person who cannot display such documentation upon request from an officer or agent of the DHSMV is guilty of a noncriminal traffic infraction, punishable as a nonmoving violation.

vouchers in 24 months.[55] The specialty license plate must also be discontinued if the organization no longer exists, stops providing services that are authorized to be funded from the annual use fee proceeds, or pursuant to an organizational recipient's request. [56]

The following specialty license plates have been discontinued by the DHSMV:

- The American Red Cross plate for failing to meet sales requirements;[57]
- The Donate Organs Pass It On plate because the organization has closed;[58] and
- The St. Johns River plate and Hispanic Achievers plate for not meeting presale requirements.[59]

Effect of Proposed Changes

Sections 12 and 13 amend ss. 320.08056 and 320.08058, F.S., respectively, to remove the American Red Cross plate, the Donate Organs Pass It On plate, the St. Johns River plate, and the Hispanic Achievers plate from law.

Purple Heart Motorcycle Plate (Section 15)

Present Situation

DHSMV currently offers multiple military special license plates available to certain military service members or veterans, but only offers two military motorcycle special plates: the Disabled Veteran motorcycle plate and the Paralyzed Vets of America motorcycle plate.[60]

Purple Heart Medal

The Purple Heart is one of the oldest and most recognized American military medals, awarded to service members who were killed or wounded by enemy action. The Purple Heart differs from all other decorations in that an individual is not "recommended" for the decoration; rather he or she is entitled to it upon meeting specific criteria.[61] The Purple Heart is ranked immediately behind the Bronze Star Medal and ahead of the Defense Meritorious Service Medal[62] in order of precedence.

[55] Sections 320.08056(8)(a) and 320.08053(1)(b), F.S.; Florida collegiate plates are exempt from these requirements.
[56] Section 320.08056(8)(b), F.S.
[57] DHSMV Technical Advisory RS/TL16-009, *American Red Cross Specialty License Plate* (April 6, 2016), *available at* https://www.flhsmv.gov/dmv/bulletins/2016/ta_rstl16-009.pdf (last visited Mar. 22, 2017).
[58] DHSMV Technical Advisory RS/TL16-019, *Deauthorization of Donate Organs Pass It On Specialty License Plate* (July 15, 2016), *available at* https://www.flhsmv.gov/dmv/bulletins/2016/ta_rstl16-019.pdf (last visited Mar. 22, 2017).
[59] After 24 months in the presale process, the Hispanic Achievers plate had 26 registrations and the St. Johns River plate had 45 registrations. See DHSMV website, *Pre-Sale Specialty License Plate Vouchers* (June 30, 2016), http://www.flhsmv.gov/specialtytags/PreSaleData.html (last visited Mar. 22, 2017).
[60] For plate samples, see DHSMV, *Military License Plates*, *available at* http://www.flhsmv.gov/specialtytags/miltags.html (last visited Mar. 22, 2017).
[61] Paragraph 1-14(c), Army Regulation 600-8-22.
[62] The Defense Meritorious Service Medal is awarded in the name of the Secretary of Defense to members of the Armed Forces of the United States who, after 3 November 1977, distinguished themselves by noncombat meritorious achievement or service.

Effect of Proposed Changes

Section 15 creates s. 320.0875, F.S., to establish a Purple Heart motorcycle special license plate. A Florida resident who owns or leases a motorcycle that is not used for hire or commercial use, and who was awarded a Purple Heart may receive a Purple Heart motorcycle license plate upon:

- Application to the DHSMV;
- Payment of the motorcycle license tax[63]; and
- Documentation acceptable to the DHSMV that he or she is a recipient of the Purple Heart medal.

The Purple Heart motorcycle plate shall be stamped with the words "Combat-wounded Veteran" followed by the serial number, the term "Purple Heart," and the likeness of the Purple Heart medal.

Bronze Star License Plate (Section 16)

Present Situation

Currently, there are 21 special military plates authorized in s. 320.089, F.S., available to military service members or veterans. [64] Special military plates authorized under this section are stamped with words consistent with the type of special plate issued, and include a likeness of the related campaign medal or badge, if applicable. Applicants for special military license plates authorized under this section are required to pay the annual license tax in s. 320.08, F.S., with the exception of certain disabled veterans who qualify for the Pearl Harbor, Purple Heart, or Prisoner of War plate, to whom such plates are issued at no cost.[65] With the exception of Woman Veteran plates, the first $100,000 of revenue generated annually from the sale of special use military plates is deposited into the Grants and Donations Trust Fund under the Veterans' Nursing Homes of Florida Act, as described in s. 296.38(2), F.S. Additional revenue is deposited into the State Homes for Veterans Trust Fund and used to construct, operate, and maintain domiciliary and nursing homes for veterans.[66] Proceeds from the Woman Veteran plates must be deposited into the Operations and Maintenance Trust Fund administered by the Department of Veterans' Affairs to be used solely for the purpose of creating and implementing programs that benefit women veterans.[67]

Bronze Star Medal

The Bronze Star Medal was established on February 4, 1944, to recognize those who served after December 6, 1941, in any capacity in or with the Armed Forces of the United States or a friendly

[63] Section 320.08(1)(a) and (c), F.S., provide the motorcycles have a flat license tax of $10 plus a $2.50 nonrefundable motorcycle education safety fee.
[64] The 21 military special plates currently offered in s. 320.089, F.S., include plates available for the following types of service: Veteran or Woman Veteran of the U.S. Armed Forces, World War II, Korean War, or Vietnam War Veteran, Navy Submariner, Active or retired National Guard member or U.S. Reservists, Pearl Harbor survivor, recipient of the Combat Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, Air Force Combat Action Medal, Distinguished Flying Cross, or Purple Heart, former Prisoner of War, and service members or veterans of Operation Desert Shield, Desert Storm, Enduring Freedom, and Iraqi Freedom.
[65] Section 320.089(1)(c) and (2)(a), F.S.
[66] Section 320.089(1)(b), F.S.
[67] Section 320.089(1)(c), F.S.

foreign nation. The Bronze Star Medal is awarded to a person who distinguished himself or herself by heroic or meritorious service, not involving participation in aerial flight, in connection with military operations against an armed enemy; or while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party. Recipients of the Bronze Star Medal must be receiving imminent danger pay while serving in a geographic area authorized for special pay.[68] In order of precedence, the Department of Defense (DoD) places the Bronze Star Medal seventh amongst DoD wide military decorations and awards following the Distinguished Flying Cross and preceding the Purple Heart.[69]

Effect of Proposed Changes

Section 16 creates a special military license plate for recipients of the Bronze Star Medal. The plate will be stamped with the words "Bronze Star" and a likeness of the Bronze Star Medal. To receive a Bronze Star special military license plate, the individual must submit an application for the plate to the DHSMV, provide proof that he or she is a Bronze Star Medal recipient, and pay the appropriate license tax as provided in s. 320.08, F.S. Revenue generated from the sale of the Bronze Star plate is deposited in the Grants and Donations Trust Fund and the State Home for Veterans Trust Fund, both of which are administered by the FDVA.

This section also makes technical changes to s. 320.089, F.S., to provide clarity.

Transporter License Plates (Section 17)

Present Situation

Section 320.133, F.S., allows the DHSMV to issue transporter license plates. Transporter plates are available for an applicant who, incidental to the conduct of the applicant's business, engages in the transporting of unregistered motor vehicles, and who pays a license tax and provides proof of liability insurance coverage of at least $100,000. A transporter plate is valid for 1 year, beginning January 1 to December 31, for a flat license tax of $101.25.[70] To apply for a transporter plate, the business applicant certifies he understands the plate may only be used for motor vehicles in possession of the business that are being transported in the course of the business.[71]

Types of businesses that may require the use of transporter plates include:
- Motor vehicle detail shops;
- Van conversion shops or other shops installing specialized equipment on vehicles;
- Businesses that transport mobile homes and recreational vehicles;
- Licensed repossessors; and
- Businesses that deliver unregistered vehicles (Drive away services).

[68] Department of the Army, *Military* Awards, Army Regulation 600-8-22 (June 25, 2015).
[69] Department of Defense, *Manual of Military Decorations and Awards: DoD Service Awards – Campaign, Expeditionary, and Service Medals*, Manual No. 1348.33, Vol. 2 (May 15, 2015). The order of precedence for military awards varies by branch of service.
[70] Sections 320.08(15) and 320.133(3), F.S.
[71] *See* DHSMV, *Application for Transporter License Plates* (May 2011), *available at* https://www.flhsmv.gov/pdf/forms/83065.pdf (last visited Feb. 10, 2017).

Currently, there are 8,332 transporter license plates issued by the state, and approximately 4,618 businesses and individuals who have these plates issued to them.[72] There is no requirement for the business applying for the plate to prove it is engaged in transporting unregistered vehicles. The DHSMV has discovered businesses are using transporter license plates on company vehicles rather than on vehicles being transported for the business. According to DHSMV, it has little authority under current law to inquire as to whether the license plates are being used appropriately by applicants.[73]

Effect of Proposed Changes

Section 17 makes numerous changes to s. 320.133, F.S., concerning transporter license plates, including defining a "transporter license plate eligible business," requiring additional business information from applicants for transporter licenses, and adding penalties for improper use of transporter license plates.

This section also requires applicants for transporter license plates to provide proof satisfactory to the DHSMV that the business is a "transporter license plate eligible business," which is defined as a business engaged in the limited operation of unregistered motor vehicles or a repossessor who contracts with lending institutions to repossess or recover motor vehicles or mobile homes. Additionally, the application for a transporter license plate must include:

- The legal name of the person or persons applying for the license plate;
- The name of the business, and principal or principals of the business;
- A description of the exact physical location of the place of business within the state;
- Proof of a garage liability insurance policy or a business automobile policy in the amount of $100,000;
- Proof that the business is registered with the Division of Corporations of the Department of State to conduct business in the state; and
- A description of the business processes the business conducts that requires a need for a transporter license plate.

The business certificate of insurance must also indicate the number of transporter license plates reported to the insurance company, which will be the maximum number the DHSMV will issue to the applicant. The applicant is required to maintain such coverage for the entire transporter license plate registration period. The applicant is also required to maintain for two years, records of use for each transporter license plate. Such records must be at the business's location and open to inspection by the DHSMV or any law enforcement agency during reasonable business hours.

This section clarifies that the transporter license plate is only valid for use on an unregistered motor vehicle being transported in the course of the transporter's business and cannot be used on any motor vehicle that would require registration by the business. The DHSMV has authority to cancel any transporter license plate.

Finally, the section adds penalties for the improper use of transporter license plates. Specifically:

[72] DHSMV, *Legislative Package Talking Points* (Jan. 24, 2017) (on file with the Senate Committee on Transportation).
[73] *Id.*

- A person who sells or unlawfully possesses, distributes, or brokers a transporter license plate to be attached to any vehicle commits a second-degree misdemeanor[74], and the plate is subject to removal;
- A person who fails to maintain true and accurate records of transporter license plate usage commits a second-degree misdemeanor[75], all transporter plates issued to the person may be subject to cancellation, and the person is disqualified from future transporter license plate issuance;
- A person who operates a motor vehicle with a transporter license plate attached who fails to provide the registration issued for the transporter license plate and proof of required insurance commits a second-degree misdemeanor[76], and the plate is subject to removal. This penalty does not apply to a person who contracts with dealers and auctions to transport motor vehicles; and
- A person who *knowingly and willfully* sells or unlawfully possesses, distributes, or brokers a transporter plate to avoid registering a vehicle that requires registration commits a first-degree misdemeanor[77], and all transporter plates issued to the person's business are canceled and must be returned to the DHSMV;

FHP Law Enforcement Training Reimbursement (Section 18)

Present Situation

Section 321.25, F.S., authorizes the DHSMV "to provide for the training of law enforcement officials and individuals in matters relating to the duties, functions, and powers of the Florida Highway Patrol…" The DHSMV is authorized to charge a fee for providing authorized training, as well as tuition, lodging, and meals. New FHP troopers receive 28 to 29 weeks of paid Law Enforcement Training at the FHP Training Academy. During this paid training, meals, lodging, equipment, and study materials are provided to FHP Academy trainees at no cost to the trainee.[78] The DHSMV estimates that the cost of training and other course expenses to the DHSMV is approximately $12,386 per trooper trainee.[79]

In Florida, if an officer trainee who attends an approved training program at the expense of an employing agency terminates employment with such agency within two years after graduation from the basic recruit training program, he or she may be required to reimburse the employing agency for the full cost of tuition and other expenses.[80] Section 943.16, F.S., allows an employing agency to institute a civil action to collect these expenses if it is not reimbursed, provided that the trainee signed acknowledgement of this requirement. Trainees are not required to reimburse the employing agency if they resign their law enforcement certification upon terminating employment. Additionally, an employing agency may waive the reimbursement

[74] The second-degree misdemeanor is punishable as provided in ss. 775.082 or 775.083, F.S., which is a definite term of imprisonment not exceeding 60 days or a fine of no more than $500.
[75] *Id.*
[76] *Id.*
[77] The first-degree misdemeanor is punishable as provided in ss. 775.82 or 775.083, which is a definite term of imprisonment not exceeding one year or a fine of no more than $1,000.
[78] FHP, *Be A Trooper- Requirements- Benefits, available at* http://beatrooper.com/requirements/ (last visited Feb. 10, 2017).
[79] Email from the DHSMV (Feb. 17, 2017) (on file with the Senate Committee on Transportation).
[80] Section 943.16, F.S.

requirement in part or in full for a trainee who terminates employment due to hardship or extenuating circumstances.[81]

Since 2012, 86 FHP members terminated employment with the FHP within two years of completing training. According to the DHSMV, the FHP only pursues reimbursement if a trooper leaves within the two years to secure employment with another law enforcement agency.[82] An additional 37 FHP members terminated employment within the third year of completing FHP training.

Effect of Proposed Changes

Section 19 amends s. 321.21, F.S., relating specifically to FHP training, to increase the employment period length to which the reimbursement requirement applies from two years to three years. If an FHP trainee terminates employment with FHP prior to completing three years of service, the DHSMV may require the trainee to reimburse the cost of the FHP training tuition and other course expenses.

The amended section retains that the DHSMV may institute a civil action to collect tuition and other related expenses if it is not reimbursed, provided the trainee signed written acknowledgement of the (3-year) requirement. Additionally, the DHSMV retains authority to waive the reimbursement requirement in part or in full if the trainee terminates employment due to hardship or extenuating circumstances. However, the amendment removes the ability of FHP trainees to resign their law enforcement certification upon termination in order to avoid having to reimburse the DHSMV for the cost of tuition and other course expenses.

"D" Designation on ID card for Persons with PTSD or TBI (Section 21)

Present Situation

DHSMV may issue an identification card to any person who is 5 years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit[83] upon completion of an application and payment of a $25 fee.[84]

Section 320.051(8)(e), F.S., provides that upon request by a person who has a developmental disability, or by a parent or guardian of a child or ward who has a developmental disability, DHSMV issue an identification card exhibiting a capital "D" for the person, child, or ward if the person or the parent or guardian of the child or ward submits:

- Payment of an additional $1 fee; and
- Proof acceptable to DHSMV of a diagnosis by a licensed physician of a developmental disability.[85]

[81] *Id.*
[82] DHSMV, *Legislative Package Talking Points* (Jan. 24, 2017) (on file with the Senate Committee on Transportation).
[83] Disabled parking permits are provided under s. 320.0848, F.S.
[84] Section 322.051, F.S.
[85] Section 393.063(12), F.S., defines "developmental disability" as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

The above provision applies upon implementation of new designs for the driver license and identification card by the DHSMV.[86]

Effect of Proposed Changes

Section 21 amends s. 322.051(8)(e)1., F.S., adding persons with post-traumatic stress disorder (PTSD)[87] or traumatic brain injury (TBI)[88] to those individuals who may receive the "D" designation on his or her identification card. This also applies to a parent or guardian's request for a child or ward.

Truancy Reporting (Section 23)

Present Situation

A minor is not eligible for driving privileges unless he or she[89]:

- Is enrolled in a public school, nonpublic school, or home education and satisfies relevant attendance requirements;
- Has received a high school diploma, a high school equivalency diploma, a special diploma, or a certificate of high school completion;
- Is enrolled in a study course in preparation for the high school equivalency examination and satisfies relevant attendance requirements; or
- Has been issued a certificate of exemption or hardship waiver under.

Subsection 322.091(5), F.S., requires the DHSMV to submit a report quarterly to each school district containing the legal name, sex, date of birth, and social security number of each student whose driving privileges have been suspended under this section.

Effect of Proposed Changes

Section 23 amends subsection 322.091(5), F.S., to remove obsolete language. According to the DHSMV, access to this report is available to school boards electronically on an accessible website.[90] The report via the website is updated in real-time whenever a new student is added.

Tax Collector Fee Distribution (Sections 24 and 26)

Present Situation

In 2010, the Florida Legislature required all driver license issuance services be transferred to tax collectors who are constitutional officers under s. 1(d), Art. VIII of the State Constitution by

[86] Section 3 of Ch. 2016-175, L.O.F.
[87] PTSD is defined as a mental health condition that is triggered by a terrifying event. Symptoms include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event. See Mayo Clinic website, http://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/home/ovc-20308548 (last visited Mar. 23, 2017).
[88] TBI occurs when an external mechanical force causes brain dysfunction; usually from a violent blow or jolt to the head or body. See Mayo Clinic website, http://www.mayoclinic.org/diseases-conditions/traumatic-brain-injury/basics/definition/con-20029302 (last visited Mar. 23, 2017).
[89] Section 322.091, F.S.
[90] Meeting with the DHSMV and Senate Transportation Committee Staff (Jan. 23, 2017).

June 30, 2015.[91] As part of that transfer, tax collectors retain portions of specified fees when processing certain driver license services. Additionally, tax collectors charge a $6.25 service fee for completing driver license services.[92]

Tax collectors are not currently able to retain portions of fees for some services that the tax collectors are regularly performing. For example, an applicant who fails an initial driving knowledge or skills test is required to pay a $10 or $20 fee, respectively, to be issued a subsequent test. These fees are deposited into the Highway Safety Operating Trust Fund (HSOTF), regardless of whether the DHSMV or the tax collectors administered the exam.[93]

Similarly, service fees for license reinstatements collected pursuant to s. 322.21(8), F.S., are deposited into the General Revenue Fund and HSOTF, regardless of whether the reinstatement was conducted by the DHSMV or tax collectors. Of the $45 service fee to reinstate a driver license suspension, $15 is deposited in the General Revenue Fund and $30 in the HSOTF. Of the $75 service fee to reinstate a driver license revocation or CDL disqualification, $35 is deposited in the General Revenue Fund and $40 in the HSOTF.

Effect of Proposed Changes

Sections 24 and 26 amend ss. 322.12 and 322.21 F.S., respectively, to require, for subsequent driver license initial knowledge and skills tests, that the tax collector retain the $10 or $20 fee for administering tests to applicants. The bill also requires the tax collectors to retain a portion of service fees when processing driver license reinstatements. If the reinstatement is processed by the tax collector:

- Of the $45 fee for suspension reinstatement, $15 shall be retained by the tax collector and $15 shall be deposited into the HSOTF; and
- Of the $75 fee for revocation or disqualification reinstatement, $20 shall be retained by the tax collector, $20 shall be deposited into the HSOTF, and $35 shall be deposited into the General Revenue Fund.

Stolen Identification Cards (Section 25)

Present Situation

Section 322.17, F.S., provides that in the event that an instruction permit or driver license is stolen from an individual, upon proof of identity and proof satisfactory to the DHSMV that such permit or license was stolen (generally, with copy of a police report), a replacement permit or license will be issued at no cost to the individual.

Replacement driver licenses and identification cards cost $25. According to the DHSMV, in Fiscal Year 2015-2016, individuals reported approximately 7,123 stolen identification cards to the DHSMV.[94]

[91] Chapter 2010-163, Laws of Florida and s. 322.02(1), F.S.
[92] Section 322.135(1)(c), F.S.
[93] Section 322.12(1), F.S.
[94] DHSMV, *Legislative Package Talking Points* (Jan. 24, 2017) (on file with the Senate Committee on Transportation).

Effect of Proposed Changes

Section 25 amends s. 322.17, F.S., to include that identification cards shall be replaced at no cost to an individual who provides proof of identity and proof satisfactory to the DHSMV that the card was stolen.

Specialty Driver License or Identification Cards (Section 26)

Present Situation

Section 322.1415, F.S., provided authority for DHSMV to issue specialty driver licenses and identification cards recognizing, at a minimum, Florida universities, Florida professional sports teams, and all branches of the United States Armed Forces. Additionally, s. 322.1415(5), F.S. provided that the section was repealed effective August 31, 2016.

The DHSMV is not currently authorized to offer expedited shipping services for renewal or replacement driver licenses or identification cards. The fastest way to receive a renewal or replacement driver license or identification card is to go in-person to a Florida driver license office. However, for individuals out-of-state or who cannot get to a driver license office, renewals and replacement driver licenses or identification cards may be requested using a convenience service[95], including the DHSMV's virtual office[96].

According to the DHSMV, it can take seven to fourteen days to receive a renewal or replacement driver license or identification card after it is ordered from the DHSMV's virtual office.

Effect of Proposed Changes

Section 26 amends s. 322.21, F.S., to remove an obsolete reference to specialty driver license and identification card costs from s. 322.21, F.S.

This section also provides that an applicant for a renewal or replacement driver license or identification card, when using a convenience service, will have the option to request expedited shipping. If the applicant chooses expedited shipping, the DHSMV shall issue the license or identification card within five working days of receiving the application and will ship the license or card using an expedited mail service. The DHSMV may charge a fee for the expedited shipping that does not exceed the cost of the expedited mail service. This shipping fee is in addition to any fee that would have been charged for the license or card, excluding the expedited shipping. The DHSMV shall deposit expedited shipping fees into the Highway Safety Operating Trust Fund.

Amending Cross-References (Sections 28-33)

Sections 28-33 amends numerous cross-references to reflect changes made by the bill.

[95] Section 322.01(10), F.S., defines "convenience service" as "any means whereby an individual conducts a transaction with the department other than in person."
[96] Available at https://services.flhsmv.gov/virtualoffice/Lobby.aspx (last visited Feb. 13, 2017).

Effective Date (Section 34)

This bill takes effect 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:

The Revenue Estimating Conference (REC) reviewed provisions in the bill on March 10, 2017.[97] The REC estimates that replacing stolen identification cards at no charge to a customer (section 10 of the bill) will reduce revenues deposited into the General Revenue Fund by an insignificant amount until Fiscal Years 2020 through 2022. Beginning 2020, the lost revenues of are anticipated to be $100,000 annually.

The REC estimates that allowing local tax collectors to retain fees or portions of fees for administering subsequent driver license examinations or reinstating licenses (sections 9 and 11) will shift approximately $5 million of revenues from the HSOTF and $400,000 of revenues from the General Revenue Fund annually to the local tax collectors.

Additionally, the REC estimates that authorizing expedited shipping fees for driver licenses and identification cards (section 11) will have an indeterminate impact in revenues to the extent that expedited shipping is requested.

B. Private Sector Impact:

The bill may have a positive impact for individuals who are issued a free replacement identification card to replace a stolen card (section 25), as well as CMV operators who may replace a damaged apportioned license plate at no charge (sections 9 and 11). In addition, operators of autocycles (sections 20 and 24) will not be required to obtain a motorcycle license or endorsement license, or to complete a motorcycle safety course and

[97] Office of Economic and Demographic Research, Revenue Estimating Conference, *Highway Safety Fees – HB 545* (Mar. 10, 2017), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0310.pdf at p. 22-30 (last visited Mar. 15, 2017).

a motorcycle knowledge and skills test currently required to obtain such a license or endorsement.

However, the bill may have a negative impact on individuals or businesses who misuse transporter license plates due to the added penalties for their misuse (section 17)).

The bill will have an indeterminate impact on the CMV industry as a result of changes made to CMV requirements within the bill (sections 1, 5, and 27).

C. Government Sector Impact:

The bill makes changes to address compliance issues with federal laws relating to commercial motor vehicles (sections 1, 5, and 27). According to the DHSMV, if Florida fails to comply with FMCSA compatibility requirements, Florida may experience a reduction of up to four percent of Federal-aid highway funds following the first year of noncompliance and up to eight percent for subsequent years.[98] Noncompliance may also affect the potential award of future grants.

To the extent that FHP troopers terminate employment for employment with another agency between their second and third year of service, the DHSMV may receive reimbursement for training costs from the individual (section 18). The DHSMV estimates that the cost of training and other course expenses to the DHSMV is approximately $12,386 per trooper trainee.[99]

The DHSMV will likely incur programming costs associated with changes made by the bill, as well as production costs to create Bronze Star license plates (section 16) and Purple Heart motorcycle plates (section 15).

The bill is intended to address a broad range of federal compliance, customer service and administrative efficiency issues; however, these changes have various indeterminate impacts to revenues and expenditures and the total fiscal impact of the bill on the government sector is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.003, 316.2397, 316.2398, 316.302, 316.3025, 316.614, 320.01, 320.02, 320.06, 320.0605, 320.0607, 320.08056,

[98] Email from the DHSMV (Feb. 17, 2017) (on file with the Senate Committee on Transportation).
[99] *Id.*

320.08058, 320.08068, 320.089, 320.133, 321.25, 322.01, 322.03, 322.051, 322.08, 322.091, 322.12, 322.17, 322.21, and 322.61.

This bill creates section 320.0875 of the Florida Statutes.

This bill amends the following sections of the Florida Statutes to conform cross-references: 212.05, 316.303, 316.545, 316.613, 320.08, and 655.960.

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 22, 2017:
The CS adds several issues to the bill. Specifically, the CS:

- Creates a definition for an autocycle, requires occupants of autocycles to wear safety belts, and exempts drivers of autocycles from being required to have a motorcycle endorsement or motorcycles license, or from completing motorcycle knowledge and skills testing;
- Allows volunteer firefighters to use red and white, in addition to red, warning signals;
- Allows a person driving a rental vehicle who is stopped by a law enforcement officer or agent of the DHSMV to show an electronic copy of a rental agreement;
- Changes references to the organization "Prevent Blindness" to "Preserve Vision";
- Creates a Purple Heart motorcycle special license plate;
- Creates a Bronze Star license plate;
- Removes specialty license plates from statute that have been discontinued by the DHSMV; and
- Allows a person diagnosed with PTSD or TBI to be eligible to receive a "D" designation on his or her ID card.

The CS modifies changes to the bill sections on the Issuance of Apportionable Vehicle Plates. The CS removes language from current law indicating that the cab card denotes the declared gross vehicle weight *for each jurisdiction in which the vehicle is authorized to operate*. The CS also changes that a $28 annual fee is for an original and a renewed validation sticker, instead of for the annual cab card.

B. Amendments:

None.

By the Committee on Transportation; and Senators Gainer and Rouson

596-02740-17 2017784c1

A bill to be entitled

An act relating to the Department of Highway Safety and Motor Vehicles; amending s. 316.003, F.S.; defining the term "autocycle"; redefining the term "motorcycle"; conforming a cross-reference; amending ss. 316.2397 and 316.2398, F.S.; prohibiting vehicles or equipment from showing or displaying red and white lights while being driven or moved; authorizing firefighters to use or display red and white lights under certain circumstances; authorizing active volunteer firefighters to display red and white warning signals under certain circumstances; amending s. 316.302, F.S.; revising provisions relating to federal regulations to which owners and drivers of commercial motor vehicles are subject; terminating the maximum amount of a civil penalty for falsification of information on certain time records; deleting the requirement that a motor carrier maintain documentation of a driver's driving times throughout a duty period if the driver is not released from duty within a specified period; providing an exemption from specified rules and regulations for a person who operates a commercial motor vehicle with a declared gross vehicle weight, gross vehicle weight rating, and gross combined weight rating of less than a specified amount under certain circumstances; amending s. 316.3025, F.S.; conforming provisions to changes made by the act; amending s. 316.614, F.S.; redefining the term "motor vehicle"; prohibiting a person from

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operating an autocycle unless certain safety belt or child restraint device requirements are met; amending s. 320.01, F.S.; redefining the term "apportionable vehicle"; redefining the term "motorcycle"; amending s. 320.02, F.S.; requiring an application form for motor vehicle registration to include language authorizing a voluntary contribution to be distributed to Preserve Vision Florida, rather than to Prevent Blindness Florida; amending s. 320.06, F.S.; providing for future repeal of issuance of a certain annual license plate and cab card to a vehicle that has an apportioned registration; providing requirements, beginning on a specified date, for license plates, cab cards, and validation stickers for vehicles registered in accordance with the International Registration Plan; authorizing a worn or damaged license plate to be replaced at no charge under certain circumstances; amending s. 320.0605, F.S.; authorizing presentation of electronic documentation of certain information to a law enforcement officer or agent of the department; providing construction; providing liability; revising information required in such documentation; amending s. 320.0607, F.S.; providing an exemption, beginning on a specified date, of a certain fee for vehicles registered under the International Registration Plan; amending s. 320.08056, F.S.; deleting the American Red Cross, Donate Organs-Pass It On, St. Johns River, and Hispanic Achievers license plates; conforming cross-references; repealing s. 320.08058(31), (57), (69),

and (70), F.S., relating to the American Red Cross, Donate Organs-Pass It On, St. Johns River, and Hispanic Achievers license plates, respectively; amending s. 320.08068, F.S.; requiring The Able Trust to distribute a specified percentage of annual use fees from motorcycle specialty license plates to Preserve Vision Florida, rather than to Prevent Blindness Florida; creating s. 320.0875, F.S.; providing for a motorcycle special license plate to be issued to a recipient of the Purple Heart; providing requirements for the plate; amending s. 320.089, F.S.; providing for a special license plate to be issued to a recipient of the Bronze Star; making technical changes; amending s. 320.133, F.S.; defining the term "transporter license plate eligible business"; providing that a person is not eligible to purchase or renew a transporter license plate unless he or she provides certain proof that his or her business is a transporter license plate eligible business; providing application and insurance requirements for qualification as a transporter license plate eligible business; authorizing the department to issue a transporter license plate to an applicant who is not a licensed dealer and is qualified as a transporter license plate eligible business, under certain circumstances; providing that a transporter license plate is valid only for use on an unregistered motor vehicle in the possession of the transporter, subject to certain requirements; providing a criminal penalty

for a person who sells or unlawfully possesses, distributes, or brokers a transporter license plate to be attached to any vehicle; providing that transporter license plates are subject to cancellation by the department; providing a criminal penalty and disqualification from transporter license plate usage for a person who knowingly and willfully sells or unlawfully possesses, distributes, or brokers a transporter license plate to avoid registering a vehicle requiring registration, subject to certain requirements; providing recordkeeping requirements for a transporter license plate eligible business; providing a criminal penalty, cancellation of transporter license plates, and disqualification from future issuance of the plates for a violation of such recordkeeping requirements; requiring a transporter license plate issued under this section to be accompanied by registration and proof of insurance when attached to a motor vehicle; providing a criminal penalty and removal of the license plate for a person who fails to provide such documentation; providing an exemption to persons who contract with dealers and auctions to transport motor vehicles; conforming provisions to changes made by the act; providing that an initial registration or renewal issued under this section is valid for a specified period; requiring a license plate attached to a motor vehicle in violation of specified provision to be removed by a law enforcement officer and surrendered to the department

by the law enforcement agency for cancellation; amending s. 321.25, F.S.; providing for reimbursement to the department of tuition and other course expenses for certain training under certain circumstances; defining the term "other course expenses"; authorizing the department to institute a civil action under certain circumstances; authorizing the department to waive a person's requirement of reimbursement when the person terminates employment due to hardship or extenuating circumstances; amending s. 322.01, F.S.; conforming provisions to changes made by the act; amending s. 322.03, F.S.; authorizing a person to operate an autocycle without a motorcycle endorsement; amending s. 322.051, F.S.; revising eligibility for a "D" designation on an identification card to include posttraumatic stress disorder or traumatic brain injury; amending s. 322.08, F.S.; requiring an application form for an original, renewal, or replacement driver license or identification card to include language authorizing a voluntary contribution to Preserve Vision Florida, rather than to Prevent Blindness Florida; amending s. 322.091, F.S.; requiring the department to make available, upon request, a report to each school district of certain information for each student whose driving privileges have been suspended under this section; amending s. 322.12, F.S.; requiring the tax collector to retain specified fees if a subsequent knowledge or skills test is administered by the tax collector; exempting

the operation of an autocycle from certain examination requirements for licenses to operate motorcycles; amending s. 322.17, F.S.; providing for replacement of a stolen identification card at no charge, subject to certain requirements; amending s. 322.21, F.S.; deleting obsolete provisions; deleting a fee for certain specialty driver licenses or identification cards; providing disposition of specified fees for reinstatement of a driver license following a suspension, revocation, or disqualification when the reinstatement is processed by the department or the tax collector; requiring an applicant who submits an application for a renewal or replacement driver license or identification card to the department using a convenience service to be provided with an option for expedited shipping, subject to certain requirements; requiring a fee to be charged for the expedited shipping option, subject to certain requirements; providing for disposition of such fee; amending s. 322.61, F.S.; adding violations for texting or using a handheld mobile telephone while driving a commercial motor vehicle as specified offenses that, in certain circumstances, result in disqualification from operating a commercial motor vehicle for a specified period; amending ss. 212.05, 316.303, 316.545, 316.613, 320.08, and 655.960, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (2) through (97) of section 316.003, Florida Statutes, are redesignated as subsections (3) through (98), respectively, a new subsection (2) is added to that section, and present subsections (41) and (55) of that section are amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(2) AUTOCYCLE.—A three-wheel motorcycle that has two wheels in the front and one wheel in the back, is equipped with a roll cage or roll hoops, safety belts for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it and is manufactured by a National Highway Traffic Safety Administration registered manufacturer in accordance with the applicable federal motorcycle safety standards under 49 C.F.R. part 571.

(42) ~~(41)~~ MOTORCYCLE.—Any motor vehicle that has ~~having~~ a seat or saddle for the use of the rider which is ~~and~~ designed to travel on not more than three wheels in contact with the ground, including an autocycle. The term does not include a tractor, a moped, or a vehicle in which the operator is enclosed by a cabin unless the vehicle meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle ~~but excluding a tractor or a moped~~.

(56) ~~(55)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (78)(b) ~~(77)(b)~~, any privately owned way

or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 2. Subsections (1) and (3) of section 316.2397, Florida Statutes, are amended to read:

316.2397 Certain lights prohibited; exceptions.—

(1) A ~~No~~ person may not ~~shall~~ drive or move or cause to be moved any vehicle or equipment upon any highway within this state with a ~~any~~ lamp or device thereon showing or displaying a red, red and white, or blue light visible from directly in front thereof except for certain vehicles ~~hereinafter~~ provided in this section.

(3) Vehicles of the fire department and fire patrol, including vehicles of volunteer firefighters as permitted under s. 316.2398, may show or display red, or red and white, lights. Vehicles of medical staff physicians or technicians of medical facilities licensed by the state as authorized under s. 316.2398, ambulances as authorized under this chapter, and buses and taxicabs as authorized under s. 316.2399 may show or display red lights. Vehicles of the fire department, fire patrol, police vehicles, and such ambulances and emergency vehicles of municipal and county departments, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Transportation, the Department of Agriculture and Consumer Services, and the Department of Corrections as are designated or authorized by their respective department or the chief of police of an incorporated city or any sheriff of any county may operate emergency lights and sirens in

an emergency. Wreckers, mosquito control fog and spray vehicles, and emergency vehicles of governmental departments or public service corporations may show or display amber lights when in actual operation or when a hazard exists provided they are not used going to and from the scene of operation or hazard without specific authorization of a law enforcement officer or law enforcement agency. Wreckers must use amber rotating or flashing lights while performing recoveries and loading on the roadside day or night, and may use such lights while towing a vehicle on wheel lifts, slings, or under reach if the operator of the wrecker deems such lights necessary. A flatbed, car carrier, or rollback may not use amber rotating or flashing lights when hauling a vehicle on the bed unless it creates a hazard to other motorists because of protruding objects. Further, escort vehicles may show or display amber lights when in the actual process of escorting overdimensioned equipment, material, or buildings as authorized by law. Vehicles owned or leased by private security agencies may show or display green and amber lights, with either color being no greater than 50 percent of the lights displayed, while the security personnel are engaged in security duties on private or public property.

Section 3. Section 316.2398, Florida Statutes, is amended to read:

316.2398 Display or use of red, or red and white, warning signals; motor vehicles of volunteer firefighters or medical staff.—

(1) A privately owned vehicle belonging to an active firefighter member of a regularly organized volunteer firefighting company or association, while en route to the fire

station for the purpose of proceeding to the scene of a fire or other emergency or while en route to the scene of a fire or other emergency in the line of duty as an active firefighter member of a regularly organized firefighting company or association, may display or use red, or red and white, warning signals. ~~or~~ A privately owned vehicle belonging to a medical staff physician or technician of a medical facility licensed by the state, while responding to an emergency in the line of duty, may display or use red warning signals. Warning signals must be visible from the front and from the rear of such vehicle, subject to the following restrictions and conditions:

(a) No more than two red, or red and white, warning signals may be displayed.

(b) No inscription of any kind may appear across the face of the lens of the red, or red and white, warning signal.

(c) In order for an active volunteer firefighter to display such red, or red and white, warning signals on his or her vehicle, the volunteer firefighter must first secure a written permit from the chief executive officers of the firefighting organization to use the red, or red and white, warning signals, and this permit must be carried by the volunteer firefighter at all times while the red, or red and white, warning signals are displayed.

(2) A ~~It is unlawful for any~~ person who is not an active firefighter member of a regularly organized volunteer firefighting company or association or a physician or technician of the medical staff of a medical facility licensed by the state may not ~~to~~ display on any motor vehicle owned by him or her, at any time, any red, or red and white, warning signals as

described in subsection (1).

(3) ~~It is unlawful for~~ An active volunteer firefighter may not ~~to~~ operate any red, or red and white, warning signals as authorized in subsection (1), except while en route to the fire station for the purpose of proceeding to the scene of a fire or other emergency, or while at or en route to the scene of a fire or other emergency, in the line of duty.

(4) ~~It is unlawful for~~ A physician or technician of the medical staff of a medical facility may not ~~to~~ operate any red warning signals as authorized in subsection (1), except when responding to an emergency in the line of duty.

(5) A violation of this section is a nonmoving violation, punishable as provided in chapter 318. In addition, a ~~any~~ volunteer firefighter who violates this section shall be dismissed from membership in the firefighting organization by the chief executive officers thereof.

Section 4. Subsection (1) and paragraphs (a), (c), (d), and (f) of subsection (2) of section 316.302, Florida Statutes, are amended to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.—

(1) Except as otherwise provided in subsection (3):

(a) All owners and drivers of commercial motor vehicles that are operated on the public highways of this state while engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397.

(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations

contained in 49 C.F.R. parts 382, 383, 385, and 390-397~~, with the exception of 49 C.F.R. s. 390.5 as it relates to the definition of bus,~~ as such rules and regulations existed on December 31, 2016 ~~2012~~.

(c) The emergency exceptions provided by 49 C.F.R. s. 392.82 also apply to communications by utility drivers and utility contractor drivers during a Level 1 activation of the State Emergency Operations Center, as provided in the Florida Comprehensive Emergency Management plan, or during a state of emergency declared by executive order or proclamation of the Governor.

(d) Except as provided in ~~s. 316.215(5), and except as provided in~~ s. 316.228 for rear overhang lighting and flagging requirements for intrastate operations, the requirements of this section supersede all other safety requirements of this chapter for commercial motor vehicles.

(2)(a) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 need not comply with 49 C.F.R. ss. 391.11(b)(1) and 395.3 ~~395.3(a) and (b)~~.

(c) Except as provided in 49 C.F.R. s. 395.1, a person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 may not drive after having been on duty more than 70 hours in any period of 7 consecutive days or more than 80 hours in any period of 8 consecutive days if the motor carrier operates every day of the week. Thirty-four consecutive hours off duty shall constitute

the end of any such period of 7 or 8 consecutive days. This weekly limit does not apply to a person who operates a commercial motor vehicle solely within this state while transporting, during harvest periods, any unprocessed agricultural products or unprocessed food or fiber that is subject to seasonal harvesting from place of harvest to the first place of processing or storage or from place of harvest directly to market or while transporting livestock, livestock feed, or farm supplies directly related to growing or harvesting agricultural products. Upon request of the Department of Highway Safety and Motor Vehicles, motor carriers shall furnish time records or other written verification to that department so that the Department of Highway Safety and Motor Vehicles can determine compliance with this subsection. These time records must be furnished to the Department of Highway Safety and Motor Vehicles within 2 days after receipt of that department's request. Falsification of such information is subject to a civil penalty ~~not to exceed $100~~. ~~The provisions of~~ This paragraph does ~~do~~ not apply to operators of farm labor vehicles operated during a state of emergency declared by the Governor or operated pursuant to s. 570.07(21)~~,~~ and does ~~do~~ not apply to drivers of utility service vehicles as defined in 49 C.F.R. s. 395.2.

(d) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 within a 150 air-mile radius of the location where the vehicle is based need not comply with 49 C.F.R. s. 395.8~~,~~ if the requirements of 49 C.F.R. s. 395.1(e)(1)(ii), (e)(1)(iii)(A) and (C), ~~395.1(e)(1)(iii)~~ and (e)(1)(v) are met. ~~If a driver is not released from duty within 12 hours after the driver arrives for duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period.~~

(f) A person who operates a commercial motor vehicle having a ~~declared~~ gross vehicle weight, gross vehicle weight rating, and gross combined weight rating of less than 26,001 pounds solely in intrastate commerce and who is not transporting hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172~~, or who is transporting petroleum products as defined in s. 376.301,~~ is exempt from subsection (1). However, such person must comply with 49 C.F.R. parts 382, 392, and 393~~,~~ and with 49 C.F.R. ss. 396.3(a)(1) and 396.9.

Section 5. Paragraph (a) of subsection (6) of section 316.3025, Florida Statutes, is amended to read:

316.3025 Penalties.—

(6)(a) A driver who violates 49 C.F.R. s. 392.80, which prohibits texting while operating a commercial motor vehicle, or 49 C.F.R. s. 392.82, which prohibits using a handheld mobile telephone while operating a commercial motor vehicle, may be assessed a civil penalty ~~and commercial driver license disqualification~~ as follows:

1. First violation: $500.

2. Second violation: $1,000 ~~and a 60-day commercial driver license disqualification pursuant to 49 C.F.R. part 383~~.

3. Third and subsequent violations: $2,750 ~~and a 120-day commercial driver license disqualification pursuant to 49 C.F.R. part 383~~.

Section 6. Paragraph (a) of subsection (3) and subsections (4) and (5) of section 316.614, Florida Statutes, are amended to

read:

316.614 Safety belt usage.—

(3) As used in this section:

(a) "Motor vehicle" means a motor vehicle as defined in s. 316.003 which is operated on the roadways, streets, and highways of this state. The term does not include:

1. A school bus.

2. A bus used for the transportation of persons for compensation.

3. A farm tractor or implement of husbandry.

4. A truck having a gross vehicle weight rating of more than 26,000 pounds.

5. A motorcycle, excluding an autocycle for purposes of subsections (4) and (5), moped, or bicycle.

(4) It is unlawful for any person:

(a) To operate a motor vehicle or an autocycle in this state unless each passenger and the operator of the vehicle under the age of 18 years are restrained by a safety belt or by a child restraint device pursuant to s. 316.613, if applicable; or

(b) To operate a motor vehicle or an autocycle in this state unless the person is restrained by a safety belt.

(5) It is unlawful for any person 18 years of age or older to be a passenger in the front seat of a motor vehicle or an autocycle unless such person is restrained by a safety belt when the vehicle is in motion.

Section 7. Subsections (24) and (26) of section 320.01, Florida Statutes, are amended to read:

320.01 Definitions, general.—As used in the Florida

Statutes, except as otherwise provided, the term:

(24) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, ~~buses used in transportation of chartered parties,~~ and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered.

(26) "Motorcycle" means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including an autocycle. The term does not include a tractor, a moped, or ~~excluding~~ a vehicle in which the operator is enclosed by a cabin unless the vehicle ~~it~~ meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle. ~~The term "motorcycle" does not include a tractor or a moped.~~

Section 8. Paragraph (a) of subsection (15) of section

320.02, Florida Statutes, is amended to read:

320.02 Registration required; application for registration; forms.—

(15)(a) The application form for motor vehicle registration must ~~shall~~ include language permitting the voluntary contribution of $1 per applicant, to be quarterly distributed by the department to Preserve Vision ~~Prevent Blindness~~ Florida, a not-for-profit organization, to prevent blindness and preserve the sight of the residents of this state. A statement providing an explanation of the purpose of the funds shall be included with the application form. Prior to the department distributing the funds collected pursuant to this paragraph, Preserve Vision ~~Prevent Blindness~~ Florida must submit a report to the department that identifies how such funds were used during the preceding year.

For the purpose of applying the service charge provided in s. 215.20, contributions received under this subsection are not income of a revenue nature.

Section 9. Paragraph (b) of subsection (1) of section 320.06, Florida Statutes, is amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(1)

(b)1. Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate shall be replaced. The department shall extend the scheduled license plate replacement date from a 6-

year period to a 10-year period. The fee for such replacement is $28, $2.80 of which shall be paid each year before the plate is replaced, to be credited toward the next $28 replacement fee. The fees shall be deposited into the Highway Safety Operating Trust Fund. A credit or refund may not be given for any prior years' payments of the prorated replacement fee if the plate is replaced or surrendered before the end of the 10-year period, except that a credit may be given if a registrant is required by the department to replace a license plate under s. 320.08056(8)(a). With each license plate, a validation sticker shall be issued showing the owner's birth month, license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker shall be placed on the upper right corner of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months, the extended registration period is 24 months, and all expirations occur based on the applicant's appropriate registration period.

2. A vehicle that has an apportioned registration shall be issued an annual license plate and a cab card denoting ~~that denote~~ the declared gross vehicle weight ~~for each apportioned jurisdiction in which the vehicle is authorized to operate~~. This subparagraph expires October 1, 2018.

3. Beginning October 1, 2018, a vehicle registered in accordance with the International Registration Plan which has an apportioned registration shall be issued a license plate for a 5-year period, an annual cab card denoting the declared gross vehicle weight, and an annual validation sticker showing the

month and year of expiration. The validation sticker shall be placed in the center of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months. The fee for an original and a renewed validation sticker is $28. This fee shall be deposited into the Highway Safety Operating Trust Fund. If the license plate is damaged or worn, it may be replaced at no charge by applying to the department and surrendering the current license plate.

4.~~2.~~ In order to retain the efficient administration of the taxes and fees imposed by this chapter, the 80-cent fee increase in the replacement fee imposed by chapter 2009-71, Laws of Florida, is negated as provided in s. 320.0804.

Section 10. Section 320.0605, Florida Statutes, is amended to read:

320.0605 Certificate of registration; possession required; exception.—

(1)(a) The registration certificate or an official copy thereof, a true copy or electronic copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period, a temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet, or a cab card issued for a vehicle registered under the International Registration Plan shall, at all times while the vehicle is being used or operated on the roads of this state, be in the possession of the operator thereof or be carried in the vehicle for which issued and shall be exhibited upon demand of any authorized law enforcement officer or any agent of the department, except for a vehicle

registered under s. 320.0657. ~~The provisions of~~ This section does ~~do~~ not apply during the first 30 days after purchase of a replacement vehicle. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b)1. The act of presenting to a law enforcement officer or agent of the department an electronic device displaying an electronic copy of rental or lease documentation does not constitute consent for the officer or agent to access any information on the device other than the displayed rental or lease documentation.

2. The person who presents the device to the officer or agent assumes the liability for any resulting damage to the device.

(2) Rental or lease documentation that is sufficient to satisfy the requirement in subsection (1) includes the following:

(a) Date ~~of rental~~ and time of ~~exit from~~ rental ~~facility~~;

(b) Rental station identification;

(c) Rental agreement number;

(d) Rental vehicle identification number;

(e) Rental vehicle license plate number and state of registration;

(f) Vehicle's make, model, and color;

(g) Vehicle's mileage; and

(h) Authorized renter's name.

Section 11. Subsection (5) of section 320.0607, Florida Statutes, is amended to read:

320.0607 Replacement license plates, validation decal, or

mobile home sticker.—

(5) Upon the issuance of an original license plate, the applicant shall pay a fee of $28 to be deposited in the Highway Safety Operating Trust Fund. Beginning October 1, 2018, this subsection does not apply to a vehicle registered under the International Registration Plan.

Section 12. Paragraphs (ee), (eee), (qqq), and (rrr) of subsection (4) and paragraph (a) of subsection (10) of section 320.08056, Florida Statutes, are amended to read:

320.08056 Specialty license plates.—

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

~~(ee) American Red Cross license plate, $25.~~

~~(eee) Donate Organs-Pass It On license plate, $25.~~

~~(qqq) St. Johns River license plate, $25.~~

~~(rrr) Hispanic Achievers license plate, $25.~~

(10)(a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1). The fees and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of United States Armed Forces and veterans-related specialty license plates pursuant to paragraphs (4)(d), (bb), (kk), (iii), and (uuu) ~~(ll), (kkk), and (yyy)~~ and s. 320.0891.

Section 13. Subsections (31), (57), (69), and (70) of section 320.08058, Florida Statutes, are repealed.

Section 14. Paragraph (b) of subsection (4) of section 320.08068, Florida Statutes, is amended to read:

320.08068 Motorcycle specialty license plates.—

(4) A license plate annual use fee of $20 shall be collected for each motorcycle specialty license plate. Annual use fees shall be distributed to The Able Trust as custodial agent. The Able Trust may retain a maximum of 10 percent of the proceeds from the sale of the license plate for administrative costs. The Able Trust shall distribute the remaining funds as follows:

(b) Twenty percent to Preserve Vision ~~Prevent Blindness~~ Florida.

Section 15. Section 320.0875, Florida Statutes, is created to read:

320.0875 Purple Heart motorcycle special license plate.—

(1) Upon application to the department and payment of the license tax for the motorcycle as provided in s. 320.08, a resident of this state who owns or leases a motorcycle that is not used for hire or commercial use shall be issued a Purple Heart motorcycle special license plate if he or she provides documentation acceptable to the department that he or she is a recipient of the Purple Heart medal.

(2) The Purple Heart motorcycle special license plate shall be stamped with the words "Combat-wounded Veteran" followed by the serial number of the license plate. The Purple Heart motorcycle special license plate may have the term "Purple Heart" stamped on the plate and the likeness of the Purple Heart medal appearing on the plate.

Section 16. Paragraph (a) of subsection (1) of section

320.089, Florida Statutes, is amended to read:

320.089 ~~Veterans of the United States Armed Forces; members of National Guard; survivors of Pearl Harbor; Purple Heart medal recipients; active or retired United States Armed Forces reservists; Combat Infantry Badge, Combat Medical Badge, or Combat Action Badge recipients; Combat Action Ribbon recipients; Air Force Combat Action Medal recipients; Distinguished Flying Cross recipients; former prisoners of war; Korean War Veterans; Vietnam War Veterans; Operation Desert Shield Veterans; Operation Desert Storm Veterans; Operation Enduring Freedom Veterans; Operation Iraqi Freedom Veterans; Women Veterans; World War II Veterans; and Navy Submariners;~~ Special license plates for military servicemembers, veterans, and Pearl Harbor survivors~~; fee~~.—

(1)(a) Upon application to the department and payment of the license tax for the vehicle as provided in s. 320.08, a resident of this state who owns or leases ~~Each owner or lessee of~~ an automobile or truck for private use or recreational vehicle as specified in s. 320.08(9)(c) or (d), which is not used for hire or commercial use, shall be issued a license plate pursuant to the following if the applicant provides the department with proof he or she meets the qualifications listed in this section for the applicable license plate:

1. A person released or discharged from any branch ~~who is a resident of the state and a veteran~~ of the United States Armed Forces shall be issued a license plate stamped with the words "Veteran" or "Woman Veteran" followed by the serial number of the license plate.~~, a Woman Veteran,~~

2. A World War II Veteran shall be issued a license plate

stamped with the words "WWII Veteran" followed by the serial number of the license plate.~~,~~

3. A Navy Submariner shall be issued a license plate stamped with the words "Navy Submariner" followed by the serial number of the license plate.~~,~~

4. An active or retired member of the Florida National Guard shall be issued a license plate stamped with the words "National Guard" followed by the serial number of the license plate.

5. A member of the Pearl Harbor Survivors Association or other person on active military duty in Pearl Harbor on December 7, 1941, shall be issued a license plate stamped with the words "Pearl Harbor Survivor" followed by the serial number of the license plate.~~, a survivor of the attack on Pearl Harbor,~~

6. A recipient of the Purple Heart medal shall be issued a license plate stamped with the words "Combat-wounded Veteran" followed by the serial number of the license plate. The Purple Heart plate may have the words "Purple Heart" stamped on the plate and the likeness of the Purple Heart medal appearing on the plate.~~,~~

7. An active or retired member of any branch of the United States Armed Forces Reserve shall be issued a license plate stamped with the words "U.S. Reserve" followed by the serial number of the license plate.

8. A member of the Combat Infantrymen's Association, Inc., or a recipient of the Combat Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, or Air Force Combat Action Medal shall be issued a license plate stamped with the words "Combat Infantry Badge," "Combat Medical Badge,"

"Combat Action Badge," "Combat Action Ribbon," or "Air Force Combat Action Medal," as appropriate, and a likeness of the related campaign badge, ribbon, or medal, followed by the serial number of the license plate.

9. A recipient of the~~, or~~ Distinguished Flying Cross shall be issued a license plate stamped with the words "Distinguished Flying Cross" and a likeness of the Distinguished Flying Cross followed by the serial number of the license plate.

10. A recipient of the Bronze Star shall be issued a license plate stamped with the words "Bronze Star" and a likeness of the Bronze Star followed by the serial number of the license plate~~, upon application to the department, accompanied by proof of release or discharge from any branch of the United States Armed Forces, proof of active membership or retired status in the Florida National Guard, proof of membership in the Pearl Harbor Survivors Association or proof of active military duty in Pearl Harbor on December 7, 1941, proof of being a Purple Heart medal recipient, proof of active or retired membership in any branch of the United States Armed Forces Reserve, or proof of membership in the Combat Infantrymen's Association, Inc., proof of being a recipient of the Combat Infantry Badge, Combat Medical Badge, Combat Action Badge, Combat Action Ribbon, Air Force Combat Action Medal, or Distinguished Flying Cross, and upon payment of the license tax for the vehicle as provided in s. 320.08, shall be issued a license plate as provided by s. 320.06 which, in lieu of the serial numbers prescribed by s. 320.06, is stamped with the words "Veteran," "Woman Veteran," "WWII Veteran," "Navy Submariner," "National Guard," "Pearl Harbor Survivor," "Combat-~~

~~wounded veteran," "U.S. Reserve," "Combat Infantry Badge," "Combat Medical Badge," "Combat Action Badge," "Combat Action Ribbon," "Air Force Combat Action Medal," or "Distinguished Flying Cross," as appropriate, and a likeness of the related campaign medal or badge, followed by the serial number of the license plate. Additionally, the Purple Heart plate may have the words "Purple Heart" stamped on the plate and the likeness of the Purple Heart medal appearing on the plate~~.

Section 17. Section 320.133, Florida Statutes, is amended to read:

320.133 Transporter license plates.—

(1) As used in this section, the term "transporter license plate eligible business" means a business that is engaged in the limited operation of an unregistered motor vehicle, or a repossessor that contracts with lending institutions to repossess or recover motor vehicles or mobile homes.

(2) A person is not eligible to purchase or renew a transporter license plate unless he or she provides proof satisfactory to the department that his or her business is a transporter license plate eligible business.

(3) The application for qualification as a transporter license plate eligible business must be in such form as is prescribed by the department and must contain the legal name of the person or persons applying for the license plate, the name of the business, and the principal or principals of the business. The application must describe the exact physical location of the place of business within the state. This location must be available at all reasonable hours for inspection of the transporter license plate records by the

department or any law enforcement agency. The application must contain proof of a garage liability insurance policy, or a business automobile policy, in the amount of at least $100,000. The certificate of insurance must indicate the number of transporter license plates reported to the insurance company. Such coverage shall be maintained for the entire registration period. Upon seeking initial qualification, the applicant must provide documentation proving that the business is registered with the Division of Corporations of the Department of State to conduct business in this state. The business must indicate how it meets the qualification as a transporter license plate eligible business by describing in detail the business processes that require the use of a transporter license plate.

(4)(a) ~~(1)~~ The department may ~~is authorized to~~ issue a transporter license plate to an ~~any~~ applicant who is not a licensed dealer and who is qualified as a transporter license plate eligible business~~, incidental to the conduct of his or her business, engages in the transporting of motor vehicles which are not currently registered to any owner and which do not have license plates,~~ upon payment of the license tax imposed by s. 320.08(15) for each transporter ~~such~~ license plate and upon proof of ~~liability~~ insurance as described in subsection (3) ~~coverage in the amount of $100,000 or more~~. The proof of insurance must indicate the number of transporter license plates reported to the insurance company, which shall be the maximum number of transporter license plates issued to the applicant. ~~Such~~ A transporter license plate is valid only for use on an unregistered ~~any~~ motor vehicle in the possession of the transporter while the motor vehicle is being transported in the

course of the transporter's business and must not be attached to any vehicle owned by the transporter or his or her business for which registration would otherwise be required. A person who sells or unlawfully possesses, distributes, or brokers a transporter license plate to be attached to any vehicle commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any and all transporter license plates issued are subject to cancellation by the department.

(b) A person who knowingly and willfully sells or unlawfully possesses, distributes, or brokers a transporter license plate to avoid registering a vehicle requiring registration pursuant to this chapter or chapter 319 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and is disqualified from transporter license plate usage. All transporter license plates issued to the person's business shall be canceled and must be returned to the department immediately upon disqualification. The transporter license plate is subject to removal as provided in subsection (9), and any and all transporter plates issued are subject to cancellation by the department.

(5) A transporter license plate eligible business issued a transporter license plate must maintain for 2 years, at its location, records of each use of each transporter license plate and evidence that the plate was used as required by this chapter. Such records must be open to inspection by the department or its agents or any law enforcement officer during reasonable business hours. A person who fails to maintain true and accurate records of any transporter license plate usage or comply with this subsection commits a misdemeanor of the second

degree, punishable as provided in s. 775.082 or s. 775.083, may be subject to cancellation of any and all transporter license plates issued, and is automatically disqualified from future transporter license plate issuance.

(6) When attached to a motor vehicle, a transporter license plate issued under this section must be accompanied by the registration issued for the transporter license plate by the department and proof of insurance as described in subsection (3). A person who operates a motor vehicle with a transporter license plate attached who fails to provide the documentation listed in this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and the transporter license plate is subject to removal as provided in subsection (9). This subsection does not apply to a person who contracts with dealers and auctions to transport motor vehicles.

(7) ~~(2)~~ A transporter license plate issued pursuant to subsection (4) ~~(1)~~ must be in a distinctive color approved by the department, and the word "transporter" must appear on the face of the license plate in place of the county name.

(8) ~~(3)~~ An initial registration or renewal ~~A license plate~~ issued under this section is valid for ~~a period of~~ 12 months, beginning January 1 and ending December 31. A ~~No~~ refund of the license tax imposed may not be provided for any unexpired portion of a license period.

(9) A transporter license plate attached to a motor vehicle in violation of subsection (4) or subsection (6) must be immediately removed by a law enforcement officer from the motor vehicle to which it was attached and surrendered to the

department by the law enforcement agency for cancellation.

Section 18. Section 321.25, Florida Statutes, is amended to read:

321.25 Training provided at patrol schools; reimbursement of tuition and other course expenses.—

(1) The Department of Highway Safety and Motor Vehicles may ~~is authorized to~~ provide for the training of law enforcement officials and individuals in matters relating to the duties, functions, and powers of the Florida Highway Patrol in the schools established by the department for the training of highway patrol candidates and officers. The Department of Highway Safety and Motor Vehicles may ~~is authorized to~~ charge a fee for providing the training authorized by this section. The fee shall be charged to persons attending the training. The fee shall be based on the Department of Highway Safety and Motor Vehicles' costs for providing the training, and such costs may include, but are not limited to, tuition, lodging, and meals. Revenues from the fees shall be used to offset the Department of Highway Safety and Motor Vehicles' costs for providing the training. The cost of training local enforcement officers shall be paid for by their respective offices, counties, or municipalities, as the case may be. Such cost shall be deemed a proper county or municipal expense or a proper expenditure of the office of sheriff.

(2) Notwithstanding s. 943.16, a person who attends training under subsection (1) at the expense of the Department of Highway Safety and Motor Vehicles must remain in the employment or appointment of the Florida Highway Patrol for at least 3 years. Once employed, if the person fails to remain

employed by the Florida Highway Patrol for at least 3 years from the first date of employment, the person must pay the cost of tuition and other course expenses to the Department of Highway Safety and Motor Vehicles. As used in this section, the term "other course expenses" may include the cost of meals and lodging.

(3) The Department of Highway Safety and Motor Vehicles may institute a civil action to collect the cost of tuition and other course expenses if it is not reimbursed pursuant to subsection (2), provided that the Florida Highway Patrol gave written notification to the person of the 3-year employment commitment during the employment screening process and the person returned signed acknowledgment of receipt of such notification.

(4) Notwithstanding any other provision of this section, the Department of Highway Safety and Motor Vehicles may waive a person's requirement of reimbursement in part or in full when the person terminates employment due to hardship or extenuating circumstances.

Section 19. Subsection (4) of section 322.01, Florida Statutes, is amended to read:

322.01 Definitions.—As used in this chapter:

(4) "Authorized emergency vehicle" means a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized by s. 316.2397 to display red, red and white, or blue lights, and that is on call to respond to emergencies. The term includes, but is not limited to, ambulances, law enforcement vehicles, fire trucks, and other rescue vehicles. The term does not include wreckers, utility trucks, or other

vehicles that are used only incidentally for emergency purposes.

Section 20. Subsection (4) of section 322.03, Florida Statutes, is amended to read:

322.03 Drivers must be licensed; penalties.—

(4) A person may not operate a motorcycle unless he or she holds a driver license that authorizes such operation, subject to the appropriate restrictions and endorsements. A person may operate an autocycle without a motorcycle endorsement.

Section 21. Paragraph (e) of subsection (8) of section 322.051, Florida Statutes, is amended to read:

322.051 Identification cards.—

(8)

(e)1. Upon request by a person who has posttraumatic stress disorder, a traumatic brain injury, or a developmental disability, or by a parent or guardian of a child or ward who has posttraumatic stress disorder, a traumatic brain injury, or a developmental disability, the department shall issue an identification card exhibiting a capital "D" for the person, child, or ward if the person or the parent or guardian of the child or ward submits:

a. Payment of an additional $1 fee; and

b. Proof acceptable to the department of a diagnosis by a licensed physician of a developmental disability as defined in s. 393.063, posttraumatic stress disorder, or traumatic brain injury.

2. The department shall deposit the additional $1 fee into the Agency for Persons with Disabilities Operations and Maintenance Trust Fund under s. 20.1971(2).

3. A replacement identification card that includes the

designation may be issued without payment of the fee required under s. 322.21(1)(f).

4. The department shall develop rules to facilitate the issuance, requirements, and oversight of posttraumatic stress disorder, traumatic brain injury, and developmental disability identification cards under this section.

Section 22. Paragraph (m) of subsection (8) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license; requirements for license and identification card forms.—

(8) The application form for an original, renewal, or replacement driver license or identification card must include language permitting the following:

(m) A voluntary contribution of $1 per applicant, which shall be distributed to Preserve Vision ~~Prevent Blindness~~ Florida, a not-for-profit organization, to prevent blindness and preserve the sight of the residents of this state.

A statement providing an explanation of the purpose of the trust funds shall also be included. For the purpose of applying the service charge provided under s. 215.20, contributions received under paragraphs (b)-(t) are not income of a revenue nature.

Section 23. Subsection (5) of section 322.091, Florida Statutes, is amended to read:

322.091 Attendance requirements.—

(5) REPORTING AND ACCOUNTABILITY.—The department shall make available, upon request, a report ~~quarterly~~ to each school district of the legal name, sex, date of birth, and social security number of each student whose driving privileges have

been suspended under this section.

Section 24. Subsections (1) and (5) of section 322.12, Florida Statutes, are amended to read:

322.12 Examination of applicants.—

(1) It is the intent of the Legislature that every applicant for an original driver license in this state be required to pass an examination pursuant to this section. However, the department may waive the knowledge, endorsement, and skills tests for an applicant who is otherwise qualified and who surrenders a valid driver license from another state or a province of Canada, or a valid driver license issued by the United States Armed Forces, if the driver applies for a Florida license of an equal or lesser classification. An ~~Any~~ applicant who fails to pass the initial knowledge test incurs a $10 fee for each subsequent test, to be deposited into the Highway Safety Operating Trust Fund; however, if a subsequent test is administered by the tax collector, the tax collector shall retain the $10 fee. An ~~Any~~ applicant who fails to pass the initial skills test incurs a $20 fee for each subsequent test, to be deposited into the Highway Safety Operating Trust Fund; however, if a subsequent test is administered by the tax collector, the tax collector shall retain the $20 fee. A person who seeks to retain a hazardous-materials endorsement, pursuant to s. 322.57(1)(e), must pass the hazardous-materials test, upon surrendering his or her commercial driver license, if the person has not taken and passed the hazardous-materials test within 2 years before applying for a commercial driver license in this state.

(5)(a) The department shall formulate a separate

examination for applicants for licenses to operate motorcycles. Any applicant for a driver license who wishes to operate a motorcycle, and who is otherwise qualified, must successfully complete such an examination, which is in addition to the examination administered under subsection (3). The examination must test the applicant's knowledge of the operation of a motorcycle and of any traffic laws specifically relating thereto and must include an actual demonstration of his or her ability to exercise ordinary and reasonable control in the operation of a motorcycle. Any applicant who fails to pass the initial knowledge examination will incur a $5 fee for each subsequent examination, to be deposited into the Highway Safety Operating Trust Fund. Any applicant who fails to pass the initial skills examination will incur a $10 fee for each subsequent examination, to be deposited into the Highway Safety Operating Trust Fund. In the formulation of the examination, the department shall consider the use of the Motorcycle Operator Skills Test and the Motorcycle in Traffic Test offered by the Motorcycle Safety Foundation. The department shall indicate on the license of any person who successfully completes the examination that the licensee is authorized to operate a motorcycle. If the applicant wishes to be licensed to operate a motorcycle only, he or she need not take the skill or road test required under subsection (3) for the operation of a motor vehicle, and the department shall indicate such a limitation on his or her license as a restriction. Every first-time applicant for licensure to operate a motorcycle must provide proof of completion of a motorcycle safety course, as provided for in s. 322.0255, before the applicant may be licensed to operate a

motorcycle.

(b) The department may exempt any applicant from the examination provided in this subsection if the applicant presents a certificate showing successful completion of a course approved by the department, which course includes a similar examination of the knowledge and skill of the applicant in the operation of a motorcycle.

(c) This subsection does not apply to the operation of an autocycle.

Section 25. Paragraph (b) of subsection (1) of section 322.17, Florida Statutes, is amended to read:

322.17 Replacement licenses, identification cards, and permits.—

(1)

(b) In the event that an instruction permit, ~~or~~ driver license, or identification card issued under ~~the provisions of~~ this chapter is stolen, the person to whom the same was issued may, at no charge, obtain a replacement upon furnishing proof satisfactory to the department that such permit, ~~or~~ license, or identification card was stolen and further furnishing the person's full name, date of birth, sex, residence and mailing address, proof of birth satisfactory to the department, and proof of identity satisfactory to the department.

Section 26. Paragraphs (e) and (i) of subsection (1) and subsection (8) of section 322.21, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

322.21 License fees; procedure for handling and collecting fees.—

(1) Except as otherwise provided herein, the fee for:

(e) A replacement driver license issued pursuant to s. 322.17 is $25. Of this amount, $7 shall be deposited into the Highway Safety Operating Trust Fund and $18 shall be deposited into the General Revenue Fund. ~~Beginning July 1, 2015, or upon completion of the transition of driver license issuance services,~~ If the replacement driver license is issued by the tax collector, the tax collector shall retain the $7 that would otherwise be deposited into the Highway Safety Operating Trust Fund and the remaining revenues shall be deposited into the General Revenue Fund.

~~(i) The specialty driver license or identification card issued pursuant to s. 322.1415 is $25, which is in addition to other fees required in this section. The fee shall be distributed as follows:~~

~~1. Fifty percent shall be distributed as provided in s. 320.08058 to the appropriate state or independent university, professional sports team, or branch of the United States Armed Forces.~~

~~2. Fifty percent shall be distributed to the department for costs directly related to the specialty driver license and identification card program and to defray the costs associated with production enhancements and distribution.~~

(8) A ~~Any~~ person who applies for reinstatement following the suspension or revocation of the person's driver license must pay a service fee of $45 following a suspension, and $75 following a revocation, which is in addition to the fee for a license. A ~~Any~~ person who applies for reinstatement of a commercial driver license following the disqualification of the person's privilege to operate a commercial motor vehicle shall

pay a service fee of $75, which is in addition to the fee for a license. The department shall collect all of these fees at the time of reinstatement. The department shall issue proper receipts for such fees and shall promptly transmit all funds received by it as follows:

(a) Of the $45 fee received from a licensee for reinstatement following a suspension:

1. If the reinstatement is processed by the department, the department shall deposit $15 in the General Revenue Fund and $30 in the Highway Safety Operating Trust Fund.

2. If the reinstatement is processed by the tax collector, $15 shall be retained by the tax collector, $15 shall be deposited into the Highway Safety Operating Trust Fund, and $15 shall be deposited into the General Revenue Fund.

(b) Of the $75 fee received from a licensee for reinstatement following a revocation or disqualification:

1. If the reinstatement is processed by the department, the department shall deposit $35 in the General Revenue Fund and $40 in the Highway Safety Operating Trust Fund.

2. If the reinstatement is processed by the tax collector, $20 shall be retained by the tax collector, $20 shall be deposited into the Highway Safety Operating Trust Fund, and $35 shall be deposited into the General Revenue Fund.

If the revocation or suspension of the driver license was for a violation of s. 316.193, or for refusal to submit to a lawful breath, blood, or urine test, an additional fee of $130 must be charged. However, only one $130 fee may be collected from one person convicted of violations arising out of the same incident.

The department shall collect the $130 fee and deposit the fee into the Highway Safety Operating Trust Fund at the time of reinstatement of the person's driver license, but the fee may not be collected if the suspension or revocation is overturned. If the revocation or suspension of the driver license was for a conviction for a violation of s. 817.234(8) or (9) or s. 817.505, an additional fee of $180 is imposed for each offense. The department shall collect and deposit the additional fee into the Highway Safety Operating Trust Fund at the time of reinstatement of the person's driver license.

(10) An applicant who submits an application for a renewal or replacement driver license or identification card to the department using a convenience service shall be provided with an option for expedited shipping whereby the department, at the applicant's request, shall issue the license or identification card within 5 working days after receipt of the application and ship the license or card using an expedited mail service. A fee shall be charged for the expedited shipping option, not to exceed the cost of the expedited mail service, which is in addition to fees imposed by s. 322.051, this section, or the convenience service. Fees collected for the expedited shipping option shall be deposited into the Highway Safety Operating Trust Fund.

Section 27. Subsection (1) of section 322.61, Florida Statutes, is amended, and subsection (2) of that section is reenacted, to read:

322.61 Disqualification from operating a commercial motor vehicle.—

(1) A person who, for offenses occurring within a 3-year

period, is convicted of two of the following serious traffic violations, or any combination thereof, arising in separate incidents committed in a commercial motor vehicle shall, in addition to any other applicable penalties, be disqualified from operating a commercial motor vehicle for a period of 60 days. A holder of a commercial driver license or commercial learner's permit who, for offenses occurring within a 3-year period, is convicted of two of the following serious traffic violations, or any combination thereof, arising in separate incidents committed in a noncommercial motor vehicle shall, in addition to any other applicable penalties, be disqualified from operating a commercial motor vehicle for a period of 60 days if such convictions result in the suspension, revocation, or cancellation of the licenseholder's driving privilege:

(a) A violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a crash resulting in death;

(b) Reckless driving, as defined in s. 316.192;

(c) Unlawful speed of 15 miles per hour or more above the posted speed limit;

(d) Improper lane change, as defined in s. 316.085;

(e) Following too closely, as defined in s. 316.0895;

(f) Texting while driving a commercial motor vehicle, as prohibited by 49 C.F.R. 392.80;

(g) Using a handheld mobile telephone while driving a commercial motor vehicle, as prohibited by 49 C.F.R. 392.82;

(h) ~~(f)~~ Driving a commercial vehicle without obtaining a commercial driver license;

(i) ~~(g)~~ Driving a commercial vehicle without the proper

class of commercial driver license or commercial learner's permit or without the proper endorsement; or

(j) ~~(h)~~ Driving a commercial vehicle without a commercial driver license or commercial learner's permit in possession, as required by s. 322.03.

(2)(a) Any person who, for offenses occurring within a 3-year period, is convicted of three serious traffic violations specified in subsection (1) or any combination thereof, arising in separate incidents committed in a commercial motor vehicle shall, in addition to any other applicable penalties, including but not limited to the penalty provided in subsection (1), be disqualified from operating a commercial motor vehicle for a period of 120 days.

(b) A holder of a commercial driver license or commercial learner's permit who, for offenses occurring within a 3-year period, is convicted of three serious traffic violations specified in subsection (1) or any combination thereof arising in separate incidents committed in a noncommercial motor vehicle shall, in addition to any other applicable penalties, including, but not limited to, the penalty provided in subsection (1), be disqualified from operating a commercial motor vehicle for a period of 120 days if such convictions result in the suspension, revocation, or cancellation of the licenseholder's driving privilege.

Section 28. Paragraph (c) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible

personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

1. When a motor vehicle is leased or rented for a period of less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no tax shall be due if the taxpayer documents use of the motor vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s.

316.003(13)(a) ~~316.003(12)(a)~~ to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with the provisions of s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 29. Subsection (1) of section 316.303, Florida Statutes, is amended to read:

316.303 Television receivers.—

(1) No motor vehicle may be operated on the highways of this state if the vehicle is actively displaying moving television broadcast or pre-recorded video entertainment content that is visible from the driver's seat while the vehicle is in motion, unless the vehicle is equipped with autonomous technology, as defined in s. 316.003(3) ~~316.003(2)~~, and is being operated in autonomous mode, as provided in s. 316.85(2).

Section 30. Paragraph (b) of subsection (2) of section 316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(2)

(b) The officer or inspector shall inspect the license plate or registration certificate of the commercial vehicle to determine whether its gross weight is in compliance with the declared gross vehicle weight. If its gross weight exceeds the

declared weight, the penalty shall be 5 cents per pound on the difference between such weights. In those cases when the commercial vehicle is being operated over the highways of the state with an expired registration or with no registration from this or any other jurisdiction or is not registered under the applicable provisions of chapter 320, the penalty herein shall apply on the basis of 5 cents per pound on that scaled weight which exceeds 35,000 pounds on laden truck tractor-semitrailer combinations or tandem trailer truck combinations, 10,000 pounds on laden straight trucks or straight truck-trailer combinations, or 10,000 pounds on any unladen commercial motor vehicle. A driver of a commercial motor vehicle entering the state at a designated port-of-entry location, as defined in s. 316.003 ~~s. 316.003(54)~~, or operating on designated routes to a port-of-entry location, who obtains a temporary registration permit shall be assessed a penalty limited to the difference between its gross weight and the declared gross vehicle weight at 5 cents per pound. If the license plate or registration has not been expired for more than 90 days, the penalty imposed under this paragraph may not exceed $1,000. In the case of special mobile equipment, which qualifies for the license tax provided for in s. 320.08(5)(b), being operated on the highways of the state with an expired registration or otherwise not properly registered under the applicable provisions of chapter 320, a penalty of $75 shall apply in addition to any other penalty which may apply in accordance with this chapter. A vehicle found in violation of this section may be detained until the owner or operator produces evidence that the vehicle has been properly registered. Any costs incurred by the retention of the vehicle

shall be the sole responsibility of the owner. A person who has been assessed a penalty pursuant to this paragraph for failure to have a valid vehicle registration certificate pursuant to the provisions of chapter 320 is not subject to the delinquent fee authorized in s. 320.07 if such person obtains a valid registration certificate within 10 working days after such penalty was assessed.

Section 31. Paragraph (a) of subsection (2) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(2) As used in this section, the term "motor vehicle" means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:

(a) A school bus as defined in s. 316.003 ~~s. 316.003(68)~~.

Section 32. Section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(4) ~~s. 316.003(2)~~, tri-vehicles as defined in s. 316.003, and mobile homes as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(1) MOTORCYCLES AND MOPEDS.—

(a) Any motorcycle: $10 flat.

(b) Any moped: $5 flat.

(c) Upon registration of a motorcycle, motor-driven cycle,

or moped, in addition to the license taxes specified in this subsection, a nonrefundable motorcycle safety education fee in the amount of $2.50 shall be paid. The proceeds of such additional fee shall be deposited in the Highway Safety Operating Trust Fund to fund a motorcycle driver improvement program implemented pursuant to s. 322.025, the Florida Motorcycle Safety Education Program established in s. 322.0255, or the general operations of the department.

(d) An ancient or antique motorcycle: $7.50 flat, of which $2.50 shall be deposited into the General Revenue Fund.

(2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

(a) An ancient or antique automobile, as defined in s. 320.086, or a street rod, as defined in s. 320.0863: $7.50 flat.

(b) Net weight of less than 2,500 pounds: $14.50 flat.

(c) Net weight of 2,500 pounds or more, but less than 3,500 pounds: $22.50 flat.

(d) Net weight of 3,500 pounds or more: $32.50 flat.

(3) TRUCKS.—

(a) Net weight of less than 2,000 pounds: $14.50 flat.

(b) Net weight of 2,000 pounds or more, but not more than 3,000 pounds: $22.50 flat.

(c) Net weight more than 3,000 pounds, but not more than 5,000 pounds: $32.50 flat.

(d) A truck defined as a "goat," or other vehicle if used in the field by a farmer or in the woods for the purpose of harvesting a crop, including naval stores, during such harvesting operations, and which is not principally operated upon the roads of the state: $7.50 flat. The term "goat" means a motor vehicle designed, constructed, and used principally for

the transportation of citrus fruit within citrus groves or for the transportation of crops on farms, and which can also be used for hauling associated equipment or supplies, including required sanitary equipment, and the towing of farm trailers.

(e) An ancient or antique truck, as defined in s. 320.086: $7.50 flat.

(4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS VEHICLE WEIGHT.—

(a) Gross vehicle weight of 5,001 pounds or more, but less than 6,000 pounds: $60.75 flat, of which $15.75 shall be deposited into the General Revenue Fund.

(b) Gross vehicle weight of 6,000 pounds or more, but less than 8,000 pounds: $87.75 flat, of which $22.75 shall be deposited into the General Revenue Fund.

(c) Gross vehicle weight of 8,000 pounds or more, but less than 10,000 pounds: $103 flat, of which $27 shall be deposited into the General Revenue Fund.

(d) Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: $118 flat, of which $31 shall be deposited into the General Revenue Fund.

(e) Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: $177 flat, of which $46 shall be deposited into the General Revenue Fund.

(f) Gross vehicle weight of 20,000 pounds or more, but less than 26,001 pounds: $251 flat, of which $65 shall be deposited into the General Revenue Fund.

(g) Gross vehicle weight of 26,001 pounds or more, but less than 35,000: $324 flat, of which $84 shall be deposited into the General Revenue Fund.

(h) Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: $405 flat, of which $105 shall be deposited into the General Revenue Fund.

(i) Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: $773 flat, of which $201 shall be deposited into the General Revenue Fund.

(j) Gross vehicle weight of 55,000 pounds or more, but less than 62,000 pounds: $916 flat, of which $238 shall be deposited into the General Revenue Fund.

(k) Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: $1,080 flat, of which $280 shall be deposited into the General Revenue Fund.

(l) Gross vehicle weight of 72,000 pounds or more: $1,322 flat, of which $343 shall be deposited into the General Revenue Fund.

(m) Notwithstanding the declared gross vehicle weight, a truck tractor used within a 150-mile radius of its home address is eligible for a license plate for a fee of $324 flat if:

1. The truck tractor is used exclusively for hauling forestry products; or

2. The truck tractor is used primarily for the hauling of forestry products, and is also used for the hauling of associated forestry harvesting equipment used by the owner of the truck tractor.

Of the fee imposed by this paragraph, $84 shall be deposited into the General Revenue Fund.

(n) A truck tractor or heavy truck, not operated as a for-hire vehicle, which is engaged exclusively in transporting raw,

unprocessed, and nonmanufactured agricultural or horticultural products within a 150-mile radius of its home address, is eligible for a restricted license plate for a fee of:

1. If such vehicle's declared gross vehicle weight is less than 44,000 pounds, $87.75 flat, of which $22.75 shall be deposited into the General Revenue Fund.

2. If such vehicle's declared gross vehicle weight is 44,000 pounds or more and such vehicle only transports from the point of production to the point of primary manufacture; to the point of assembling the same; or to a shipping point of a rail, water, or motor transportation company, $324 flat, of which $84 shall be deposited into the General Revenue Fund.

Such not-for-hire truck tractors and heavy trucks used exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products may be incidentally used to haul farm implements and fertilizers delivered direct to the growers. The department may require any documentation deemed necessary to determine eligibility prior to issuance of this license plate. For the purpose of this paragraph, "not-for-hire" means the owner of the motor vehicle must also be the owner of the raw, unprocessed, and nonmanufactured agricultural or horticultural product, or the user of the farm implements and fertilizer being delivered.

(5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT; SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

(a)1. A semitrailer drawn by a GVW truck tractor by means of a fifth-wheel arrangement: $13.50 flat per registration year or any part thereof, of which $3.50 shall be deposited into the

General Revenue Fund.

2. A semitrailer drawn by a GVW truck tractor by means of a fifth-wheel arrangement: $68 flat per permanent registration, of which $18 shall be deposited into the General Revenue Fund.

(b) A motor vehicle equipped with machinery and designed for the exclusive purpose of well drilling, excavation, construction, spraying, or similar activity, and which is not designed or used to transport loads other than the machinery described above over public roads: $44 flat, of which $11.50 shall be deposited into the General Revenue Fund.

(c) A school bus used exclusively to transport pupils to and from school or school or church activities or functions within their own county: $41 flat, of which $11 shall be deposited into the General Revenue Fund.

(d) A wrecker, as defined in s. 320.01, which is used to tow a vessel as defined in s. 327.02, a disabled, abandoned, stolen-recovered, or impounded motor vehicle as defined in s. 320.01, or a replacement motor vehicle as defined in s. 320.01: $41 flat, of which $11 shall be deposited into the General Revenue Fund.

(e) A wrecker that is used to tow any nondisabled motor vehicle, a vessel, or any other cargo unless used as defined in paragraph (d), as follows:

1. Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: $118 flat, of which $31 shall be deposited into the General Revenue Fund.

2. Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: $177 flat, of which $46 shall be deposited into the General Revenue Fund.

3. Gross vehicle weight of 20,000 pounds or more, but less than 26,000 pounds: $251 flat, of which $65 shall be deposited into the General Revenue Fund.

4. Gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds: $324 flat, of which $84 shall be deposited into the General Revenue Fund.

5. Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: $405 flat, of which $105 shall be deposited into the General Revenue Fund.

6. Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: $772 flat, of which $200 shall be deposited into the General Revenue Fund.

7. Gross vehicle weight of 55,000 pounds or more, but less than 62,000 pounds: $915 flat, of which $237 shall be deposited into the General Revenue Fund.

8. Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: $1,080 flat, of which $280 shall be deposited into the General Revenue Fund.

9. Gross vehicle weight of 72,000 pounds or more: $1,322 flat, of which $343 shall be deposited into the General Revenue Fund.

(f) A hearse or ambulance: $40.50 flat, of which $10.50 shall be deposited into the General Revenue Fund.

(6) MOTOR VEHICLES FOR HIRE.—

(a) Under nine passengers: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund; plus $1.50 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(b) Nine passengers and over: $17 flat, of which $4.50

shall be deposited into the General Revenue Fund; plus $2 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(7) TRAILERS FOR PRIVATE USE.—

(a) Any trailer weighing 500 pounds or less: $6.75 flat per year or any part thereof, of which $1.75 shall be deposited into the General Revenue Fund.

(b) Net weight over 500 pounds: $3.50 flat, of which $1 shall be deposited into the General Revenue Fund; plus $1 per cwt, of which 25 cents shall be deposited into the General Revenue Fund.

(8) TRAILERS FOR HIRE.—

(a) Net weight under 2,000 pounds: $3.50 flat, of which $1 shall be deposited into the General Revenue Fund; plus $1.50 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(b) Net weight 2,000 pounds or more: $13.50 flat, of which $3.50 shall be deposited into the General Revenue Fund; plus $1.50 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(9) RECREATIONAL VEHICLE-TYPE UNITS.—

(a) A travel trailer or fifth-wheel trailer, as defined by s. 320.01(1)(b), that does not exceed 35 feet in length: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

(b) A camping trailer, as defined by s. 320.01(1)(b)2.: $13.50 flat, of which $3.50 shall be deposited into the General Revenue Fund.

(c) A motor home, as defined by s. 320.01(1)(b)4.:

1. Net weight of less than 4,500 pounds: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

2. Net weight of 4,500 pounds or more: $47.25 flat, of which $12.25 shall be deposited into the General Revenue Fund.

(d) A truck camper as defined by s. 320.01(1)(b)3.:

1. Net weight of less than 4,500 pounds: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

2. Net weight of 4,500 pounds or more: $47.25 flat, of which $12.25 shall be deposited into the General Revenue Fund.

(e) A private motor coach as defined by s. 320.01(1)(b)5.:

1. Net weight of less than 4,500 pounds: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

2. Net weight of 4,500 pounds or more: $47.25 flat, of which $12.25 shall be deposited into the General Revenue Fund.

(10) PARK TRAILERS; TRAVEL TRAILERS; FIFTH-WHEEL TRAILERS; 35 FEET TO 40 FEET.—

(a) Park trailers.—Any park trailer, as defined in s. 320.01(1)(b)7.: $25 flat.

(b) A travel trailer or fifth-wheel trailer, as defined in s. 320.01(1)(b), that exceeds 35 feet: $25 flat.

(11) MOBILE HOMES.—

(a) A mobile home not exceeding 35 feet in length: $20 flat.

(b) A mobile home over 35 feet in length, but not exceeding 40 feet: $25 flat.

(c) A mobile home over 40 feet in length, but not exceeding 45 feet: $30 flat.

(d) A mobile home over 45 feet in length, but not exceeding 50 feet: $35 flat.

(e) A mobile home over 50 feet in length, but not exceeding 55 feet: $40 flat.

(f) A mobile home over 55 feet in length, but not exceeding 60 feet: $45 flat.

(g) A mobile home over 60 feet in length, but not exceeding 65 feet: $50 flat.

(h) A mobile home over 65 feet in length: $80 flat.

(12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised motor vehicle dealer, independent motor vehicle dealer, marine boat trailer dealer, or mobile home dealer and manufacturer license plate: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund.

(13) EXEMPT OR OFFICIAL LICENSE PLATES.—Any exempt or official license plate: $4 flat, of which $1 shall be deposited into the General Revenue Fund.

(14) LOCALLY OPERATED MOTOR VEHICLES FOR HIRE.—A motor vehicle for hire operated wholly within a city or within 25 miles thereof: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund; plus $2 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(15) TRANSPORTER.—Any transporter license plate issued to a transporter pursuant to s. 320.133: $101.25 flat, of which $26.25 shall be deposited into the General Revenue Fund.

Section 33. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) “Access area” means any paved walkway or sidewalk which

is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(78)(a) or (b) ~~s. 316.003(77)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 34. This act shall take effect October 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Commerce and Tourism, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR GEORGE B. GAINER
2nd District

April 18, 2017

Re: SB 784

Dear Chair Latvala,

I am respectfully requesting Senate Bill 784, a bill related to the Department of Highway Safety and Motor Vehicles, be placed on the agenda for your committee on Appropriations.

I appreciate your consideration of this bill and I look forward to working with you and the Appropriations committee. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

Senator George Gainer
District 2

Cc. Mike Hansen, Tim Sadberry, John Shettle, Joe McVaney, Alicia Weiss, Carlecia Collins, Drew Aldikacti, Rich Reidy, and Tracy Caddell

REPLY TO:
❒ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

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)

4/25/2017
Meeting Date

784
Bill Number (if applicable)

265394
Amendment Barcode (if applicable)

Topic DUI / Interlock

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street
Street
Tallahassee, FL 32301
City State Zip

Phone (850) 681-0024

Email jorge@flapartner.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Fla Assoc. of Criminal Defense Lawyers

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)

4/25/2017
Meeting Date

SB 784
Bill Number (if applicable)

265394
Amendment Barcode (if applicable)

Topic Senator Simmons Amendment 265394 to SB 784

Name Frank Harris

Job Title Director of State Government Affairs

Address 1025 Connecticut Ave., NW, Ste. 1210 *Street*

Phone 202-688-1194

Washington *City* DC *State* 20036 *Zip*

Email frank.harris@madd.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Mothers Against Drunk Driving (MADD)

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)

4/25/17
Meeting Date

784
Bill Number (if applicable)

265394
Amendment Barcode (if applicable)

Topic _____

Name LAURA McLeod

Job Title Executive Director

Address 1725 Mahan Drive
Street

Tallahassee, FL 32308
City State Zip

Phone 850-671-3384

Email lmcleod@fladui.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Association of DUI Programs

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

4-25-17
Meeting Date

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

784
Bill Number (if applicable)

254818
Amendment Barcode (if applicable)

Topic Specialty tags

Name Ron Book

Job Title

Address 104 W Jefferson ST
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 224 3427

Email Ron@RBookPA.com

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

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

Representing Lauren's Kids

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

4-25-17
Meeting Date

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

784
Bill Number (if applicable)

292206
Amendment Barcode (if applicable)

Topic Taximeters

Name Rana Brown

Job Title

Address 104 W Jefferson St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 8502243427

Email Rana@RLBookpa.com

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

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

Representing Florida Florida Taxicab Assoc

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

SB 784
Bill Number (if applicable)

349606
Amendment Barcode (if applicable)

Topic High Risk Drivers

Name Rebecca DelaRosa

Job Title Legislative Director

Address 301 N Olive Ave, 11o1
Street
West Palm Beach, FL 33401
City State Zip

Phone 850.284.7235

Email rdelarosa@pbcgov.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Palm Beach County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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 25
Meeting Date

784
Bill Number (if applicable)

407566
Amendment Barcode (if applicable)

Topic License Plates

Name Steve Whitaker

Job Title Lawyer / Lobbyist

Address 519 E. Park Ave
Street

Tallahassee, 32301
City *State* *Zip*

Phone 850 980-6435

Email Steve@sclaw.net

Speaking: ☑ For ☐ Against ☐ Information

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

Representing UPS

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)

4/25/17
Meeting Date

784
Bill Number (if applicable)

403134
Amendment Barcode (if applicable)

Topic DEPT OF HIGHWAY SAFETY & MOTOR VEHICLES

Name LENA JUAREZ

Job Title

Address P.O. BOX 10390 *Street*

Phone 8502128330

TALLAHASSEE FL 32302 *City* *State* *Zip*

Email lenajejassoc.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA STATE BEEKEEPERS ASSOCIATION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

784
Bill Number (if applicable)

838110 to PCS
Amendment Barcode (if applicable)

Topic _____

Name Audrey Brown

Job Title President and CEO

Address 200 W. College Ave.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone 850-386-2904

Email audrey@fahp.net

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

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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)

4/25/17
Meeting Date

784
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic NON EMERGENCY TRANSPORT

Name JEFF SHARKEY

Job Title CAO, President

Address 106 E. College Ave
Street

TLH FL 32311
City *State* *Zip*

Phone 850 224 1660

Email JeffSharkey@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing LEON COUNTY

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)

4-25-17
Meeting Date

SB 784
Bill Number (if applicable)

Topic Share the Road Specialty License Plate

Amendment Barcode (if applicable)

Name Laura Hallam

Job Title Admin Asst.

Address 367 Buckhorn Creek Rd. Phone 407-399-9961
Street

Sopchoppy FL 32358 Email laura@floridabicycle.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bicycle Association

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)

4-25-17
Meeting Date

784
Bill Number (if applicable)

Topic Share the Road Specialty License Plate

Amendment Barcode (if applicable)

Name Becky Afonso

Job Title Executive Director

Address 250 Strathmore Ave
Street

Oldsmar FL 34677
City *State* *Zip*

Phone 813-748-1513

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bicycle Association

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)

4/25/2017
Meeting Date

Topic _____ Bill Number 784 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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.

S-001 (10/20/11)

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

SB 784
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 784

Name Michael Corrigan

Job Title Duval County Tax Collector

Address 231 E Forsyth St
Street

Jacksonville FL 32202
City *State* *Zip*

Phone 904: 630-1464

Email MCorrigan@coj.net

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Tax Collectors Inc

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)

4/25/17
Meeting Date

784
Bill Number (if applicable)

Topic Opposition to increasing point limit for drivers

Amendment Barcode (if applicable)

Name Franklin Bailey

Job Title Legislative Intern

Address 230 Westminster Drive
Street

Phone 407-734-8446

Tallahassee FL 32304
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Rep. Emily Slosberg, District 91.

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:	PCS/CS/SB 1118 (304644)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Gainer and others
SUBJECT:	Transportation
DATE:	April 24, 2017
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1118 reflects the Department of Transportation's (FDOT) 2017 Legislative Package. Specifically, the bill:

- Directs the FDOT, in consultation with the Department of Highway Safety and Motor Vehicles (DHSMV), to develop a Florida Smart City Challenge grant program;
- Increases the allowable gross vehicle weight for vehicles using natural-gas fueling systems by up to 2,000 pounds under certain conditions, resulting in a reduced overweight penalty and avoiding a potential loss of federal funds;
- Revises autonomous vehicle alert system requirements, consistent with current law, to clarify that an autonomous vehicle may operate in autonomous mode without a person physically present in the vehicle;
- Applies certain insurance coverage requirements, should legislation addressing insurance for transportation network companies (TNCs) become law, to autonomous vehicles used by TNCs to provide transportation, regardless of whether a human operator is physically present in the vehicle when the ride occurs;
- Defines the term "automated mobility district," directs the FDOT to designate such districts and, in determining a community's eligibility for designation, to consider applicable federal agency criteria for such districts and apply the criteria to eligible developments.
- Aligns state and federal law by mandating bridge inspections at regular intervals as required by the Federal Highway Administration, as opposed to intervals not exceeding two years,

resulting in compliance with revised national bridge inspection requirements and avoiding a potential but likely insignificant diversion of federal funds;
- Directs the FDOT to establish a process for applications for placement of roadside memorial markers at or near the location of traffic-related fatalities on the State Highway System to raise public awareness and remind motorists to drive safely and to establish criteria for the design and fabrication of the markers; provides for incorporation of emblems of belief on such markers under certain conditions; provides requirements for the placement of such markers; and directs the FDOT to remove such markers under certain conditions, subject to certain notice requirements.
- Increases the current $120,000 cap on "fast response" contracts to $250,000 to account for increased construction costs due to inflation;
- Allows turnpike bonds to be validated at the option of the Division of Bond Finance (DBF) and limits the location of publication of certain related notices to Leon County;
- Repeals the Florida Highway Beautification Council and creates the Florida Highway Beautification Grant Program within the FDOT;
- Defines "department" to mean the FDOT for purposes of part II of ch. 343, F.S., relating to the South Florida Regional Transportation Authority (SFRTA);
- Prohibits the SFRTA from entering into, extending, or renewing any contract without the FDOT's prior review and written approval of the proposed expenditures if such contract may be funded with FDOT-provided funds;
- Deems funds provided by the FDOT to the SFRTA to be state financial assistance subject to specified requirements;
- Requires the FDOT to provide funds to the SFRTA in accordance with a written agreement containing certain provisions;
- Authorizes the FDOT to advance funds to the SFRTA at the start of each fiscal year, with monthly payments for maintenance and dispatch on the South Florida Rail Corridor over the fiscal year on a reimbursement basis;
- Expressly includes transportation network companies (TNCs) in the list of providers of services for the transportation disadvantaged;
- Authorizes the FDOT Secretary to enroll the state in any federal pilot program or project for the collection and study of specified types of transportation-related data;
- Deletes and revises cross-references to conform to changes made in the act.
- Provides the bill take effect on July 1, 2017

The bill's provisions have both indeterminate negative and positive fiscal impacts on state funds, of which combined are neutral. The bill may have impacts to revenues and expenditures related to the SFRTA and the DBF. See Section V., "Fiscal Impact Statement," for details.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Florida Smart City Challenge Grant Program (Section 1)

Present Situation:

The United States Department of Transportation (USDOT) launched a Smart City Challenge in December of 2015. The challenge asked mid-sized cities "to develop ideas for an integrated, first-of-its-kind smart transportation system that would use data, applications, and technology to help people and goods move more quickly, cheaply, and efficiently."[1] The USDOT committed up to $40 million to one winning city.[2] The USDOT received 78 applications from cities across America, including the following cities in Florida: Jacksonville, Miami, Orlando, St. Petersburg, Tallahassee, and Tampa. However, no Florida city received any funding.

Ultimately, Columbus, Ohio won the challenge by proposing "a comprehensive, integrated plan addressing challenges in residential, commercial, freight, and downtown districts using a number of new technologies, including connected infrastructure, an integrated data platform, autonomous vehicles, and more."[3]The USDOT then worked with seven finalists to further develop the ideas proposed by the cities and, in October of 2016, announced an additional $65 million in grants to support advanced technology transportation projects. Again, no Florida city was among the finalists.

Effect of Proposed Changes:

Section 1 of the bill creates s. 316.0898, F.S., to direct the FDOT, in consultation with the Department of Highway Safety and Motor Vehicles, to develop the Florida Smart City Challenge grant program and establish grant award requirements for municipalities or regions. Grant applicants must demonstrate and document the adoption of emerging technologies and their impact on the transportation system, and must address at least the following focus areas:

- Autonomous vehicles;
- Connected vehicles;[4]
- Sensor-based infrastructure;
- Collecting and using data;
- Electric vehicles, including charging stations; and
- Developing strategic models and partnerships;

The stated goals of the grant program include, without limitation:

- Identifying transportation challenges and identifying how emerging technologies can address those challenges;

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[1] *See* the USDOT website available at: https://www.transportation.gov/smartcity. (Last visited April 11, 2017.)
[2] *See* the USDOT website available at: https://www.transportation.gov/sites/dot.gov/files/docs/Smart%20City%20Challenge%20Lessons%20Learned.pdf. (Last visited April 11, 2017.)
[3] *See* the USDOT website available at: https://www.transportation.gov/smartcity/winner. (Last visited April 11, 2017.)
[44] These are "vehicles that use any of a number of different communication technologies to communicate with the driver, other cars on the road (vehicle-to-vehicle [V2V], roadside infrastructure (vehicle-to-infrastructure [V2I]), and the 'Cloud.'" *See* the Center for Advanced Automotive Technology website available at: http://autocaat.org/Technologies/Automated_and_Connected_Vehicles/. (Last visited April 14, 2017.)

- Determining the emerging technologies and strategies that have the potential to provide the most significant impacts;
- Encouraging municipalities to take significant steps to integrate emerging technologies into their day-to-day operations;
- Identifying the barriers to implementing the grant program and communicating those barriers to the Legislature and appropriate agencies and organizations;
- Leveraging the initial grant to attract additional public and private investments;
- Increasing the state's competitiveness in the pursuit of grants from the USDOT, the United States Department of Energy (USDOE), and other federal agencies;
- Committing to the continued operation of programs implemented in connection with the grant;
- Serving as a model for municipalities nationwide;
- Documenting the costs and impacts of the grant program and lessons learned during implementation; and
- Identify solutions that will demonstrate local or regional economic impact.

The FDOT is directed to develop eligibility, application, and selection criteria for the program grants and a plan for the promotion of the grant program to municipalities or regions of the state as an opportunity to compete for grant funding, including the award of grants to a single recipient and secondary grants to specific projects of merit within other applications. The FDOT may contract with a third party demonstrating knowledge and expertise in that section's focuses and goals to provide guidance in the development of that section's requirements.

The FDOT must submit the grant program guidelines and plans for promotion of the program to the Governor, Senate President, and House Speaker on or before January 1, 2018. Lastly, the new s.316.0898, F.S., expires on July 1, 2018.[5]

Natural Gas-Fueled Vehicle Weight (Section 2)

Present Situation:

Motor Vehicle Weights and Overweight Penalties

The rate of damage to roads and bridges generally increases as vehicle weight increases, resulting in higher maintenance and replacement costs and potentially creating unsafe conditions. Maximum legal vehicle weights are established for all public roads and bridges and allow compliant vehicles to travel most public highways of the state without causing excessive road damage or bridge failures. However, some roads and bridges have lower weight limits due to their age, condition, or design, and these facilities have posted weight limits; *i.e.*, their lower weight limits are identified through signage at the facility. Vehicles exceeding the maximum weight limits on a facility, including posted facilities, are presumed to have damaged the highways of the state and are subject to fines.[6]

[5] SB 2500 currently authorizes the FDOT to use up to $75,000 to establish the Florida Smart City Challenge Grant Program.
[6] *See* ss. 316.545 and 316.555, F.S.

Gross vehicle weight is the total weight of a vehicle (or combination of vehicles) and any cargo carried by the vehicle.[7] Federal and state laws generally provide that gross vehicle weight may not exceed 80,000 pounds for both the interstate and non-interstate highway system, [8] or the maximum allowed by the Federal Bridge Formula.[9] In Florida, the maximum weight limit is 22,000 pounds on a single axle, and 44,000 pounds on a tandem axle.[10] These limits do not apply to those vehicles and loads that cannot be easily dismantled or divided (*i.e.*, "non-divisible"), or to other vehicles exceeding the maximum weight limits, if a special permit has been issued in accordance with applicable state laws.[11]

However, the vehicle's number of axles and the distance between the axles in part controls a vehicle's maximum allowable weight. Thus, a vehicle's maximum allowable gross weight may be reduced because the concentration of weight on a particular axle may reach unacceptable limits. For example, pavement and bridge stress is greater for a 30-foot truck with two axles and a gross vehicle weight of 50,000 pounds than a 54-foot tractor-trailer combination of the same weight because the tractor-trailer distributes the load over a greater area. Therefore, the 30-foot truck will have a lower maximum allowable weight.

For weight violations, including violations of weight criteria contained in a special permit, the penalty is as established in s. 316.545(3)(a), F.S., *i.e.*, $10 for 200 pounds or less and 5 cents per pound for each pound over 200 pounds. Unlawful axle weights are penalized at $10 for the first 600 pounds, if the gross weight of the vehicle (or vehicle combination) does not exceed the maximum allowable gross weight.[12]

For each violation of the operational or safety restrictions established in a special permit, *e.g.*, using a restricted bridge, the penalty may be as high as $1,000. However, the cumulative total for multiple violations may not exceed $1,000.[13]

These penalties are deposited into the State Transportation Trust Fund and used for roadway maintenance and repair.[14]

Cargo Capacity of Vehicles Fueled by Natural Gas Compared to Gasoline or Diesel-Fueled Vehicles

According to the U.S. Department of Energy, about 150,000 vehicles in this country are powered by natural gas, many of which are heavy-duty vehicles.[15] Natural gas vehicles (NGVs) are reported to be similar to gasoline or diesel-fueled vehicles with respect to power, acceleration,

[7] Section 316.003(27), F.S.
[8] *See* 23 U.S.C. 127 (2015) and s. 316.535, F.S.
[9] This formula is used to determine the maximum allowable weight that any set of axles on a motor vehicle may carry on the Interstate Highway System. For further detail, see the Federal Highway Administration website: http://ops.fhwa.dot.gov/freight/sw/brdgcalc/calc_page.htm. (Last visited January 20, 2017.)
[10] *See* the Florida Highway Patrol *Commercial Motor Vehicle Manual,* July 2016, at p. 8, available at: https://www.flhsmv.gov/fhp/CVE/2015truckingmanual.pdf. (Last visited January 26, 2017.)
[11] 23 U.S.C. 127(a) (2015) and s. 316.550, F.S...
[12] Section 316.545(3)(a), F.S.
[13] 316.550(10)(c), F.S.
[14] Section 316.545(6), F.S.
[15] *See* the U.S. Department of Energy Alternative Fuels Data Center website available at: http://www.afdc.energy.gov/vehicles/natural_gas.html. (Last visited November 18, 2016.)

and cruising speed; and the use of natural gas as fuel provides additional advantages, such as its domestic availability, its relative low cost, and lower emissions.[16] However, these advantages may be offset by displacement of cargo capacity, due to the heavier weight of NGV fueling systems relative to gasoline or diesel systems.[17]

Fast Act Natural Gas Vehicle Weight Allowance

The Fixing America's Surface Transportation Act (FAST Act), which authorized Federal surface transportation programs for fiscal years 2016-2020, contained a number of incentives for natural gas. In apparent recognition of the potential displacement of cargo capacity due to the heavier weight of NGVs, the FAST Act authorized a vehicle, if operated by an engine fueled primarily[18] by natural gas, to exceed any (single axle, tandem axle and bridge formula) weight limit (up to a maximum gross vehicle weight of 82,000 pounds) by an amount that is equal to the difference between:

- The weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle, and
- The weight of a comparable diesel tank and fueling system.[19]

The Federal Highway Administration (FHWA) has advised states to review state statutes, regulations, and procedures, as well as load rating and posting calculations and enforcement practices, for necessary updating.[20] Further, the FHWA noted that while the federally increased weight allowance does not preempt a state from enforcing *state* weight limits on all highways, it does "prevent[] the FHWA from imposing funding sanctions if a state authorizes the additional weight limit on its Interstate system."[21]

Florida law has long adhered to the general maximum weight limits contained in the Federal law,[22] and the FDOT issues special permits for vehicles transporting non-divisible loads and for other vehicles exceeding maximum weight limits.[23] Florida law currently grants a 500-pound weight allowance for idle reduction technology consistent with federal law, but does not authorize the additional weight for NGVs allowed in the FAST Act.[24]

FDOT Permitting of NGVs

In response to the FAST Act, the FDOT performed an assessment to determine if any bridges, other than those currently posted for weight, would require posting because of the additional

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[16] *Id.* at: http://www.afdc.energy.gov/fuels/natural_gas_benefits.html. (Last visited November 18, 2016.)
[17] *Id.*.. "The driving range of NGVs is generally less than that of comparable conventional vehicles because of the lower energy density of natural gas. Extra storage tanks can increase range, but the additional weight may displace cargo capacity."
[18] Some NGVs are fueled solely by natural gas, some are bi-fueled with two separate fueling systems that enable them to run on either natural gas or gasoline, and some are dual-fueled. Dual-fueled vehicles "are traditionally limited to heavy-duty application, have fuel systems that run on natural gas, and use diesel fuel for ignition assistance." *Supra* note 8.
[19] P.L. 114-94, s. 1410 (2015). *See also* the Federal Highway Administration Memorandum dated February 24, 2016, *Information: Fixing America's Surface Transportation Act (FAST Act) Truck Size and Weight Provisions.* (On file in the Senate Transportation Committee.)
[20] *Id.*, Memorandum Question and Answer 16.
[21] *Id.*, Question and Answer 14.
[22] *See* s. 316.535, F.S.
[23] *See* s. 316.550, F.S.
[24] Section 316.545(3)(b), F.S.

weight allowance for NGVs authorized in the Act. The FDOT advises that the study concluded that the additional weight of NGVs would not require bridges to be re-load rated or posted.[25] The FDOT also developed a permit process in June of 2016 to allow the operation of NGVs at the new Federal weight limits, but no permits were issued, perhaps because the industry is unaware of the need for such a permit.[26] As a result, the FDOT estimates that approximately 292 citations[27] have been issued, totaling $375.00 in fines, 15 of which have been contested before the Commercial Motor Vehicle Review Board.[28] The FDOT advises no relief was granted for any of the 15 contested citations.[29]

Effect of Proposed Changes:

Section 2 amends s. 316.545(3), F.S., to provide for a specified reduction in the actual gross weight of an NGV, when calculating the penalty for exceeding maximum weight limits, so long as the actual gross weight of the vehicle does not exceed 82,000 pounds, exclusive of the existing 500-pound weight allowance for idle reduction technology. The bill will create greater uniformity between federal and state law, which is especially important for truck drivers doing interstate business, and avoids a potential withholding of federal funds.

If an NGV is found to be overweight, then the penalty will be calculated by reducing the actual gross vehicle weight by the certified difference in weight between the natural gas tank and fueling system carried by that vehicle, and a comparable diesel tank and fueling system, before applying the currently applicable penalty. If the actual gross weight of the NGV exceeds 80,000 pounds plus the certified weight difference, a penalty of $.05 per pound of excess weight could be assessed.

If the NGV is also equipped with idle reduction technology, the penalty will be calculated by reducing the actual gross vehicle weight by the certified difference in weight between the natural gas tank and fueling system carried by that vehicle and a comparable diesel tank and fueling system, and by an additional 500 pounds. If the actual gross weight of the NGV with idle reduction technology exceeds 80,500 pounds plus the certified weight difference, a penalty of $.05 per pound of excess weight could be assessed.

The bill contains a proof requirement; *i.e.*, the vehicle operator must present a written certification that identifies the weight of the natural gas tank and fueling system, and the difference in weight of a comparable diesel tank and fueling system, upon request of a weight inspector or a law enforcement officer. The certification must originate from the vehicle manufacturer or the installer of the natural gas tank and fueling system.

The bill excludes vehicles described in s. 316.535(6), F.S., from qualifying for the reduced calculation. These vehicles, typically called straight trucks, include dump trucks, concrete

[25] *See* the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)
[26] *Id.*
[27] The FDOT notes this estimate is based on a search for companies that utilize NGVs and received an overweight citation in the last year. Because the citation form is not designed to specify this particular infraction, some of the 292 cases may not be related to the FAST Act. *Id.*
[28] Section 316.545(7), F.S., establishes the Board within the FDOT and authorizes the Board to review any penalty imposed under chapter 316, F.S.
[29] *Supra* note 11.

mixing trucks, trucks engaged in waste collection and disposal, and fuel oil and gasoline trucks designed and constructed for special type work. The cargo unit and the power unit on these trucks sit on the same frame,[30] meaning that the concentration of weight is greater than, for example, a combination vehicle with an axle configuration that distributes the weight over a greater area. These vehicles continue to be limited to a gross weight of 70,000 pounds.

Autonomous Vehicle Alert System Clarification (Section 5)

Present Situation:

Section 316.003(2), F.S., defines "autonomous vehicle" as any vehicle equipped with autonomous technology. That subsection also includes a definition of "autonomous technology," which means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed *without the active control or monitoring by a human operator*.[31] If a vehicle is equipped with technology that requires the active control or monitoring by a human operator, that vehicle does not meet the definition of "autonomous vehicle" under Florida law.

Section 316.85, F.S., authorizes a person who possesses a valid driver license to operate an autonomous vehicle in autonomous mode on roads in this state if the vehicle is equipped with autonomous technology as defined in s. 316.003(2), F.S. A person is deemed to be the operator of an autonomous vehicle operating in autonomous mode when the person causes the vehicle's autonomous technology to engage, regardless of whether the person is physically present in the vehicle while the vehicle is operating in autonomous mode. Thus, under Florida law, an autonomous vehicle may be operated in autonomous mode even if a person is not physically present in the vehicle.

Section 319.145, F.S., requires autonomous vehicles registered in this state to:

- Have a system to safely alert the operator if an autonomous technology failure is detected while the technology is engaged. When an alert is given, the *system* must:
  - Require the operator to take control of the autonomous vehicle; or
  - If the operator does not, or is not able to, take control of the autonomous vehicle, be capable of bringing the vehicle to a complete stop.
- Have a means inside the vehicle to visually indicate when the vehicle is operating in autonomous mode; and
- Be capable of being operated in compliance with the applicable traffic and motor vehicle laws of this state.

Effect of Proposed Changes:

Section 5 of the bill amends s. 319.145, F.S., to clarify system requirements when an alert is given. The bill provides that if the *human* operator does not, or is not able to, take control of the

[30] *See* s. 316.003(76), F.S.

[31] The latter definition does not include a motor vehicle enabled with active safety systems or driver assistance systems, including, without limitation, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warning, or traffic jam and queuing assistant, unless any such system alone or in combination with other systems enables the vehicle on which the technology is installed *to drive without the active control or monitoring by a human operator.*

autonomous vehicle, *or if a human operator is not physically present in the vehicle,* the system must be capable of bringing the vehicle to a complete stop. This revision is consistent with current law allowing an autonomous vehicle to operate in autonomous mode without a person physically present in the vehicle.

Transportation Network Companies/Autonomous Vehicles/Insurance (Section 3)

Present Situation: Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as "transportation network companies" (TNCs), rather than as vehicles for hire.

TNCs use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and drives to pick up the passenger. Once at the destination, payment is made through the phone application.

Drivers generally use their personal vehicles, and most personal automobile insurance policies contain a "livery" exclusion that excludes coverage if the vehicle is carrying passengers for hire.[32] Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is transporting passengers, but such insurance is not required. This could lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage. In contrast, taxis and limousines must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, up to $250,000 per incident for bodily injury, and $50,000 for property damage.[33]

Issues relating to insurance coverage for TNCs, and other TNC-related matters, have been under review by the Florida Legislature in recent years. The Florida Senate is currently considering legislation that would create uniform statewide minimum insurance requirements for TNCs and TNC drivers. Generally, when a TNC driver is logged onto the digital network[34] but not engaged in a prearranged ride,[35] the legislation requires:

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

[32] The exclusion in Florida law is mentioned in s. 627.041(8), F.S.
[33] Section 324.032(1)(a), F.S.
[34] CS/CS/SB 340 currently defines "digital network" to mean any online-enabled technology application service, website, or system offered or used by a TNC that enables the prearrangement of rides with TNC drivers.
[35] CS/CS/SB 340 currently defines "prearranged ride" to mean the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a TNC, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle.

- Personal Injury Protection (PIP) benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405, F.S.;[36] and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.[37]

When a TNC driver is engaged in a prearranged ride, the following insurance requirements apply:

- Primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine[38] under ss. 627.730-627.7405, F.S.; and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.[39]

Interest in the use of autonomous vehicles in ridesharing services is increasing, including with respect to fully autonomous vehicles that do not require drivers. General Motors reportedly paid $500 million for a stake and strategic alliance in Lyft to develop the use of autonomous vehicles in ridesharing and recently spent $1 billion to buy a technology company that has self-driving cars on roads in California.[40]Current Florida law does not specifically address insurance requirements for autonomous vehicles, or for autonomous vehicles used by TNCs.

Effect of Proposed Changes:

Section 3 of the bill creates s. 316.851, F.S., with an effective on the same date that the TNC legislation currently under consideration, or similar legislation, takes effect, if such legislation is enacted in the 2017 Regular Session or in any extension thereof. In that case, the bill would require an autonomous vehicle used by a TNC *to provide a prearranged ride* to be covered by automobile insurance as required by s. 627.748, F.S., created in that TNC legislation, regardless of whether a human operator is physically present in the vehicle when the ride occurs. As the legislation currently stands, the required coverage would be primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage, and uninsured and underinsured vehicle coverage as required by s. 627.727, F.S. The coverage ultimately specified in that legislation, if enacted, would be required coverage for an autonomous vehicle used by a

[36] These provisions, known as the No-Fault Law, require coverage for PIP to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits.

[37] Section 627.727(1), F.S., requires uninsured motorist vehicle coverage if a policy provides bodily injury coverage unless it is specifically rejected.

[38] Although the legislation currently requires PIP coverage at the same amounts required of limousines, limousines are excluded from PIP requirements under s 627.733(1)(a), F.S. Thus, the effect of this provision should it remain in the TNC legislation and be enacted would be to require no PIP coverage when an autonomous vehicle is engaged in a prearranged ride, regardless of whether a human operator is physically present in the vehicle when the ride occurs.

[39] *See* the CS/CS/SB 340 staff analysis for additional information and details of the legislation, available at: http://www.flsenate.gov/Session/Bill/2017/340/Analyses/2017s00340.rc.PDF. (Last visited April 24, 2017.)

[40] *See Autonomous Cars with Ridesharing Key to GM's Vision for Future Mobility*, available at: http://www.autotrader.com/car-shopping/autonomous-cars-with-ridesharing-key-to-gms-vision-for-future-mobility-254768. *See also Ford Targets Fully Autonomous Vehicle for RideSharing in 2021; Invests in New Tech Companies, Doubles Silicon Valley Team*, available at https://media.ford.com/content/fordmedia/fna/us/en/news/2016/08/16/ford-targets-fully-autonomous-vehicle-for-ride-sharing-in-2021.html . (Last visited April 14, 2017.)

TNC to provide prearranged transportation, regardless of the presence or absence of a human driver.

The bill further requires an autonomous vehicle logged on to a digital network but not engaged in a prearranged ride to maintain insurance coverage as defined in s. 627.748(7)(b), F.S. As the TNC legislation currently stands, subsection (7)(b) requires during the identified period of time:

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;
- PIP benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405, F.S.;[41] and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.

The bill also requires an autonomous vehicle used to provide a transportation service to carry in the vehicle proof of the required coverage at all times while operating in autonomous mode.

Automated Mobility Districts (Section 4)

Present Situation:

The USDOE Office of Energy Efficiency and Renewable Energy (EERE) partners with business, industry, universities, and other organizations with a focus on using renewable energy and energy efficiency technologies. One of EERE's functions is to encourage the growth of such technologies by offering funding opportunities for their development and demonstration.[42] According to the EERE, most grants are selected competitively through funding opportunity announcements (FOAs) and solicitations that occur from time to time. FOA's are posted online with directions and information for finding funding opportunities, for applying for funding, and for managing awards, as well as necessary forms.[43]

The National Renewable Energy Laboratory (NERL) is a research arm of the USDOE. The NERL in a recent study introduced the term "automated mobility districts" to describe a campus-sized implementation of automated vehicle technology to realize the benefits of fully-automated vehicle mobility service. Such districts are envisioned to use fully automated and driverless vehicles, service is confined to a geographic boundary that encompasses a relatively dense area of trip attractions, and mobility within the district is restricted to or dominated by automated vehicles. The NERL has concluded that its initial study "points to the need to better understand ride-sharing scenarios and calls for future research on sustainability benefits of an AMD system at both vehicle and system levels."[44]

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[41] These provisions, known as the No-Fault Law, require coverage for personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits.

[42] *See* the EERE website available at: https://www.energy.gov/eere/funding/eere-funding-opportunities. (Last visited April 14, 2017.)

[43] *Id.*

[44] *See Estimate of Fuel Consumption and GHG Emission Impact on an Automated Mobility District*, Chen, Young, Gonder, and Qi, presented at the 4th International Conference on Connected Vehicles & Expo in Shenzhen, China, October 19-23, 2015, available at: http://www.nrel.gov/docs/fy16osti/65257.pdf. (Last visited April 14, 2017.)

Effect of Proposed Changes:

Section 4 of the bill creates s. 316.853, F.S., to define the term "automated mobility districts" to mean a master planned development or combination of contiguous developments in which the deployment of autonomous vehicles as defined in s. 316.003, F.S., as the basis for a shared mobility system is a stated goal or objective of the development or developments. The FDOT is directed to designate such districts. In determining eligibility of a development for such designation, the FDOT must consider applicable criteria from federal agencies for autonomous mobility districts and apply those criteria to eligible developments in the state.

According to proponents, this proposed statute is expected to increase the likelihood of receiving approval of federal grant applications for funding opportunities associated with the deployment of autonomous vehicles in Florida.

Bridge Inspection Frequency (Section 6)

Present Situation:

National Bridge Inspection Standards

Federal law requires the U.S.D.O.T. Secretary, in consultation with states and Federal agencies having jurisdiction, to inventory all highway bridges on public roads; to classify the bridges according to serviceability, safety, and essentiality for public use; and to assign each bridge a risk-based priority for systematic preventative maintenance, replacement, or rehabilitation.[45] The Federal-aid Highway Act of 1968 required the Secretary to develop regulations establishing national bridge inspection standards with the primary purpose of locating and evaluating existing bridge deficiencies to ensure the safety of the traveling public. The current standards are specified in 23 C.F.R. 650, Subpart C, and apply to all highway bridges located on all public roads.

States are required by the standards to inspect all highway bridges located on public roads that are fully or partially located within the state, except for bridges owned by Federal agencies. Inspections are to be conducted in accordance with the American Association of State Highway and Transportation Officials *Manual for Condition Evaluation of Bridges*, which "serves as a standard and provides uniformity in the procedures and policies for determining the physical condition, maintenance needs, and load capacity of the Nation's highway bridges."[46]

National Inspection Frequency Revisions

Before 2005, with specific reference to frequency of bridge inspections, the national standards generally required each bridge to be inspected at regular intervals not to exceed two years but recognized that certain bridges require inspection at less than two-year intervals. Those earlier standards also recognized that the maximum inspection interval for certain bridges could be appropriately increased in cases in which past inspection reports and favorable experience and analysis justified an increase. States were authorized to submit a detailed proposal and

[45] *See* 23 U.S.C. 144 (2015).
[46] *Federal Register*, Vol. 74, no. 246, Thursday, December 24, 2009, at 68378.

supporting data for approval of an increased interval, but in no case could the maximum time period between inspections exceed four years.

Changes to the standards, effective January 13, 2005, among other items, included expansion of the bridge inspection frequency provisions, such that the FDOT is required to:

- Inspect each bridge at regular intervals not exceeding 24 months for routine inspections;[47] establish criteria to determine the level and frequency of inspection of bridges at less than 24-month intervals, considering such factors as age, traffic characteristics, and known deficiencies; and seek written approval from the Federal Highway Administration (FHWA) to inspect certain bridges at greater than 24-month intervals if past inspection findings and analyses justify an increased interval.
- Inspect underwater structural elements at regular intervals not exceeding 60 months; establish criteria to determine the level and frequency of inspection of these elements at less than 60-month intervals, considering such factors as construction material, environment, age, scour characteristics, condition rating from past inspections, and known deficiencies; and seek written approval from the FHWA to inspect certain underwater structural elements at greater than 60-month intervals, but not exceeding 72 months, if past inspection findings and analysis justify an increased interval.
- Inspect fracture critical members (FCMs)[48] at intervals not to exceed 24 months; establish criteria to determine the level and frequency of inspection of FCMs at less than 24-month intervals, considering such factors as age, traffic characteristics, and known deficiencies; and establish criteria to determine the level and frequency of damage, in-depth, and special inspections.[49]

Compliance Reviews

States are subject to an annual review for compliance with the national standards using 23 metrics[50] that contain criteria for assessing a state's compliance with each metric. A state is notified of any finding of noncompliance and provided an opportunity for correction. If a state ultimately remains noncompliant, the penalty is that the state must dedicate certain funds that would otherwise be available for projects to correcting the noncompliance.[51] The FDOT advises it has received no such notification.[52]

[47] "Routine inspection" is defined as a regularly scheduled inspection consisting of observations and/or measurements needed to determine the physical and functional condition of the bridge, to identify any changes from initial or previously recorded conditions, and to ensure that the structure continues to satisfy present service requirements. 23 C.F.R. 650.305 (4-1-16).
[48] "Fracture critical member" is defined as a member in tension, or with a tension element, whose failure would probably cause a portion of or the entire bridge to collapse. A "fracture critical member inspection" is defined as a hands-on inspection of a fracture critical member or member components that may include visual and other non-destructive evaluation. *Id.*
[49] "Damage inspection" is defined as an unscheduled inspection to assess structural damage resulting from environmental factors or human actions. "In-depth inspection" is defined as a close-up inspection of one or more members above or below the water level to identify any deficiencies not readily detectable using routine inspection procedures, with hands-on inspection being necessary at some locations. "Special inspection" is defined as an inspection scheduled at the discretion of the bridge owner, used to monitor a particular known or suspected deficiency. *Id.*
[50] *See* the *Federal Register*, Vol. 79, No. 91, Monday, May 12, 2014, for a listing of each metric and citations to their locations in the Code of Federal Regulations, as well as an overview of the compliance review process.
[51] These are National Highway Performance Program funds and Surface Transportation Block Grant Program funds. *See* 23 U.S.C. 144(h)(5) (2015).
[52] Telephone conversation with the FDOT staff, January 26, 2017.

Florida Bridge Inspection Law

The existing Florida Statutes do not comply with the described national bridge inspection frequency provisions. Currently, Florida law requires the governmental entity having maintenance responsibility for each bridge on a public transportation facility to inspect such bridges at regular intervals not to exceed two years.[53, 54]

The FDOT does have already-established criteria for routine inspections at intervals not exceeding 24 months, and for certain other inspection levels and frequencies for bridges determined to require inspection at less than 24-month intervals.[55] However, because of the existing state mandate for inspection of each bridge at intervals *not exceeding* 2 years, the FDOT has not developed nor sought written approval from the FHWA for the inspection intervals, criteria, and FHWA approvals required by the revised national standards.

Effect of Proposed Changes:

Section 6 amends s. 335.074(2), F.S., to require bridge inspections at regular intervals *as required by the Federal Highway Administration*, rather than at intervals not exceeding 2 years. This revision will allow the FDOT to seek FHWA approval of its existing procedures, develop and establish the criteria for the required increased inspection intervals, and obtain the FHWA's approval, consistent with the revised national standards. A potential but likely insignificant[56] diversion of federal funds from actual projects to noncompliance correction is avoided.

Highway Memorial Markers/Traffic-Related Fatalities (Section 7)

Present Situation:

Current Florida law contains no provision specifically relating to the placement of roadside memorial markers at or near the location of traffic-related fatalities on the State Highway System.[57] Current state law also contains no provision addressing the use of belief system symbols or imagery on roadside memorial markers. Research suggests some states ban roadside markers outright as a matter of safety, without regard to symbols or imagery. Other states, including Florida, have programs or policies for roadside markers that use a standard round sign with a safety message, such as, "Drive Safely," with the deceased person's name on the sign. Still other states appear to allow roadside memorials for a limited time, after which they are removed, but whether those memorials may display belief system symbols or imagery is not clear. Arizona's Roadside Memorial *Policy* allows markers to "incorporate various types of symbols."[58]

[53] Section 335.074(2), F.S.
[54] Section 335.074(3)(b), F.S., requires each governmental entity to report its inspections to the FDOT.
[55] *See* the FDOT Procedure 850-010-030-j, section 3.2. (Copy on file in the Senate Transportation Committee.)
[56] Telephone conversation with the FDOT staff February 1, 2017.
[57] Section 334.044(24), F.S., defines "State Highway System" as the interstate system and all other roads within the state that were under the jurisdiction of the state on June 10, 1995, and roads constructed by an agency of the state for the State Highway System, plus roads transferred to the state's jurisdiction after that date by mutual consent with another governmental entity, but not including roads so transferred from the state's jurisdiction. These facilities are facilities to which access is regulated.
[58] Copy available at: http://azdot.gov/docs/default-source/about/roadside-memorial-policy.pdf?sfvrsn=0. (Last visited April 5, 2017.)

Emblems of belief are allowed under certain conditions in National Cemeteries. The U.S. Department of Veterans Affairs National Cemetery Administration (Administration) prohibits graphics, logos, or symbols on government-furnished headstones or markers placed in National Cemeteries, other than the available emblems of belief, the Civil War Union Shield, the Civil War Confederate Southern Cross of Honor, and the Medal of Honor insignias.

An "emblem of belief" is defined in federal regulations to mean an emblem that represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent. In the absence of evidence to the contrary, the Veterans Administration will accept as genuine an applicant's statement regarding the sincerity of the religious or functionally equivalent belief system of a deceased eligible individual. The religion or belief system represented by an emblem need not be associated with or endorsed by a church, group or organized denomination. Emblems of belief do not include social, cultural, ethnic, civic, fraternal, trade, commercial, political, professional or military emblems.[59, 60]

Emblems of belief for inscription on government-furnished headstones and markers may be requested by the decedent's next of kin, a person authorized in writing by the next of kin, or a personal representative authorized in writing by the decedent.[61]

After establishing the decedent's initial eligibility, emblems of belief not available for inscription on headstones and markers may be requested by application that contains:

- Certification by the applicant that the proposed new emblem represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent;[62] and
- A three-inch diameter digitized black and white representation of the requested emblem that can be reproduced in a production-line environment.[63]

In the absence of evidence to the contrary, the Administration will accept as genuine an applicant's statement regarding the sincerity of the religious or functionally equivalent belief system. If a dispute arises, federal regulation provides for resolution first in accordance with any specific instructions given by the decedent, second in accordance with the instructions of the decedent's surviving spouse and, if no surviving spouse, in accordance with the agreement and written consent of the decedent's living next of kin.[64]

Effect of Proposed Changes:

Section 7 of the bill creates s. 335.094, F.S., relating to highway memorial markers, modeled after the National Cemetery regulations. Recognizing the FDOT's mission to provide a safe transportation system, the bill expresses Legislative intent that the FDOT allow the use of

[59] 38 C.F.R. 38.632(b)(2) (7-1-16).
[60] *See* the Administration's website, which reflects the currently approved emblems of belief, available at: https://www.cem.va.gov/hmm/emblems.asp. (Last visited April 14, 2017.)
[61] 38 C.F.R. 38.632(b)(1) (7-1-16).
[62] 38 C.F.R. 38.632(e)(1) (7-1-16).
[63] 38 C.F.R. 38.632(e)(2) (7-1-16).
[64] 38 C.F.R. 38.632(g) (7-1-16).

highway memorial markers at or near the location of traffic-related fatalities on the State Highway System to raise public awareness and remind motorists to drive safely, by memorializing people who have died as a result of a traffic-related crash.

The FDOT is required to establish a process, including any forms deemed necessary, for submitting applications for installation of memorial markers. The bill authorizes the following individuals to submit applications:

- A member of the decedent's family, which includes the decedent's spouse; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent; or
- Any individual who is responsible under the laws of this state for the disposition of the unclaimed remains of the decedent or for other matters relating to the interment or memorialization of the decedent.

The FDOT must establish criteria for the design and fabrication of the markers, including, but not limited to, marker components, fabrication material, and size.

At no charge to the applicant, the FDOT is authorized to install a marker described as a round aluminum sign panel with white background and black letters uniformly inscribed "Drive Safely, In Memory Of" followed by the decedent's name.

On request of the applicant and payment of a reasonable fee set by the FDOT to offset production costs, the marker may incorporate the available emblems of belief approved by the National Cemetery Administration. An applicant may request a new emblem not specifically approved by the Administration for inscription on a marker as follows:

- The applicant must certify that the propose new emblem represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent.
- In the absence of evidence to the contrary, the FDOT is directed to accept as genuine an applicant's statement of the religious or functionally equivalent belief system of a decedent.

If the FDOT determines that any application is incomplete, the FDOT is directed to notify the applicant in writing of the missing information, and that no further action on the application will be taken until the missing information is provided.

For any approved application, the FDOT is directed to place a memorial marker at or near the location of the fatality in a fashion that reduces driver distraction and positions the marker as near the right-of-way line as possible.

Lastly, the bill provides that memorial markers are intended to remind passing motorists of the dangers of unsafe driving and are not intended for visitation, and directs the FDOT to remove a marker if the FDOT determines its presence creates a safety hazard. In such cases, the FDOT is directed to post a notice near where the marker was located indicating the marker has been removed and provide contact information for pickup of the marker. The FDOT must store any removed marker for 60 days and may thereafter, at its discretion, dispose of any marker not claimed.

Fast Response Contracts Cap (Section 8)

Present Situation:

FDOT Contracting Authority

Generally, the FDOT is authorized to enter into contracts for the construction and maintenance of all roads designated as part of the State Highway System, the State Park Road System, or of any roads placed under its supervision by law. This authorization includes construction and maintenance contracts for rest areas, weigh stations, and other structures, including roads, parking areas, supporting facilities and associated buildings used in connection with such facilities. With certain exceptions, these contracts must be advertised for competitive bidding, and such contracts generally must be awarded to the lowest responsible bidder.[65]

Required Surety Bond

A successful bidder on a construction or maintenance contract is required to post a surety bond in an amount equal to the awarded contract price with certain exceptions. One exception is the FDOT's authorization to waive all or a portion of the bond requirement if the contract price is $250,000 or less, and if the FDOT determines that the project is of a noncritical nature and that nonperformance will not endanger public health, safety, or property.[66] With respect to construction contracts, the FDOT may waive all or a portion of a bond for contracts of $150,000 or less if the FDOT makes the same determination.[67]

Fast Response Contracting Cap

One of the exceptions to the competitive bidding requirement currently authorizes the FDOT, under certain conditions, to enter into construction and maintenance contracts, up to the amount of $120,000, without advertising and receiving competitive bids. The FDOT may exercise this authority when the FDOT determines that doing so is in the best interest of the public for reasons of public concern, economy, or improved operations or safety, and only when circumstances dictate rapid completion of the work:

- To ensure timely completion of projects or avoidance of undue delay for other projects;
- To accomplish minor repairs or construction and maintenance activities for which time is of the essence and for which significant cost savings would occur; or
- To accomplish nonemergency work necessary to ensure avoidance of adverse conditions that affect the safe and efficient flow of traffic.[68]

The FDOT is required to make a good faith effort to obtain two or more quotes, if available, from qualified contractors before entering into any contract and give consideration to disadvantaged business enterprise participation. If, however, the work exists within the limits of an existing contract, the FDOT must make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract. These contracts fund projects such as

[65] Section 337.11, F.S.
[66] Section 337.18(1), F.S.
[67] Section 337.14(2). F.S.
[68] Section 337.11(6)(c), F.S.

sinkhole repairs that protect roadways and other infrastructure, traffic railing and guardrail repairs needed to protect the safety of the traveling public, and drainage and inlet work that prevents roadway flooding during heavy rain.

When first enacted in 1999, the threshold amount was set at $60,000,[69] and the Legislature increased that amount to the current $120,000 in 2002.[70]

Construction Costs and Inflation

The FDOT advises that the usefulness of this statute has been limited by increased construction costs due to inflation and notes the only issue with meeting the conditions outlined in the statute is the current $120,000 cap. The FDOT performed an analysis to reach an approximate estimate of the current $120,000 contract cap converted to present-day costs, concluding that the current cap, adjusted for inflation, amounts to over $200,000.[71] The FDOT advises that increasing the current cap to $250,000 "will account for increased construction costs and extend the Department's ability to quickly respond to construction and maintenance needs that are in the best interest of safety and the economy."[72]

Effect of Proposed Changes:

Section 8 amends s. 337.11(6)(c), F.S., to increase the current $120,000 threshold amount to $250,000. The FDOT will be authorized to enter into maintenance and construction contracts, after making the necessary determination and when circumstances dictate rapid completion of the work, up to a contract amount of $250,000. The FDOT's described authority to waive all or a portion of a required surety bond remains unchanged.

Turnpike Revenue Bonds/Bond Validation (Sections 9 and 15)

Present Situation:

Bond Validation

The Division of Bond Finance (DBF) is authorized to issue revenue bonds on behalf of the FDOT to finance or refinance the cost of legislatively approved turnpike projects in accordance with s. 11(f), Art. VII of the State Constitution.[73] The state or its agencies may issue revenue bonds without a vote of the electors to finance or refinance the cost of state fixed capital outlay projects[74] authorized by law, and purposes incidental thereto, which bonds are payable solely

[69] Ch. 99-385, Laws of Fla.
[70] Ch. 2002-20, Laws of Fla.
[71] *See* the FDOT's Office of Policy Planning document, *Advisory Inflation Factors for Previous Years (1987-2016)*, available at: http://www.fdot.gov/planning/policy/costs/retrocostinflation.pdf. (Last visited January 25, 2017.)
[72] *See* the FDOT's 2017 Legislative Proposal, *Rapid-Response Contracts-Price Increase*. (On file in the Senate Transportation Committee.)
[73] Section 338.227(3), F.S.
[74] Defined in s. 216.011(1)(p), F.S., to mean the appropriation category used to fund real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility, when appropriated by the Legislature in the fixed capital outlay appropriation category.

from funds other than state tax revenues; e.g., toll revenues.[75] The DBF must submit a proposed bond issuance for approval by the State Board of Administration.[76] The Board, by resolution, may authorize the DBF to issue bonds on behalf of a state agency at one time or from time to time,[77] and the Board must approve all bonds to be issued by the DBF as to fiscal sufficiency.[78]

Once approved, such bonds must be validated under ch. 75, F.S.[79] In a bond validation proceeding, the entity authorized by law to issue bonds files a complaint to establish its authority to incur bonded debt, as well as the legality of all proceedings in connection with the bond issuance.[80] A final judgment validating such bonds is "forever conclusive" and may not be challenged in any court by any person or party.[81]

As described by the DBF with specific reference to Turnpike bonds:

> Bond validation is a judicial procedure through which the legality of a proposed bond issue may be determined in advance of its issuance. It serves to assure bondholders that future court proceedings will not invalidate a government's pledge to repay the bonds. Validation is generally not necessary for established borrowing programs, such as Turnpike bonds, where any legal issues relating to the bonds have been resolved previously. Validation is optional for almost all bonds issued by the Division of Bond Finance, including Public Education Capital Outlay Bonds and University Revenue Bonds. If a constitutional or statutory question arises for a proposed bond issue, a complaint for validation may be filed in circuit court even if validation is not required.[82]

Required Notice Publication

In any action to validate bonds issued pursuant to s. 338.227, F.S., the complaint must be filed in the circuit court of Leon County, and the notice required by s. 75.06, F.S., must be published in a newspaper of general circulation *in Leon County and in two other newspapers of general circulation in the state*.[83] The complaint and order of the circuit court must be served only on the state attorney of the circuit in which the action is pending (the Second Circuit).

Section 75.06(2), F.S., requires the clerk, before the date set for hearing on a complaint to validate Turnpike bonds, to publish a copy of the court's order requiring appearance at the hearing in Leon County at least once each week for two consecutive weeks, commencing with

[75] *See also* s. 215.59(2) and s. 215.79, F.S.
[76] The State Board of Administration, created by the Florida Constitution, is governed by the Governor as the Chair of the Board of Trustees, the Chief Financial Officer, and the Attorney General. The Board is one of several boards and commissions making up the Florida Cabinet system. The Florida Cabinet consists of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.
[77] Section 215.68, (1), F.S.
[78] Section 215.73, F.S.
[79] Section 215.82(2), F.S.
[80] *See* s. 75.02, F.S.
[81] Section 75.09, F.S.
[82] *See* copy of email from the Florida Division of Bond Finance to House staff dated January 27, 2015 (On file with the Senate Committee on Transportation).
[83] Emphasis added.

the first publication, which may not be less than 20 days before the date set for hearing, *in a newspaper in each of the counties where the proceeds of the bonds are to be expended, and in a newspaper published in Leon County.*[84]

However, if publication pursuant to s. 215.82, F.S., would require publication in more newspapers than would publication pursuant to s. 75.06, F.S., then publication pursuant to s. 75.06, F.S., controls.[85] The currently required publication is dependent upon the geographic reach of the project(s) for which funding through bond issuance is sought.

Effect of Proposed Changes:

The bill leaves validation of turnpike bonds to the discretion of the DBF and limits provisions relating to publication of the required notice.

Section 9 creates subsection (5) of s. 338.227, F.S., to:
- Provide turnpike bonds issued pursuant to that section are not required to be validated pursuant to chapter 75, F.S., notwithstanding s. 215.82, F.S.;
- Provide for validation at the option of the DBF; and
- Require the notice under s. 75.06, F.S., to be published only in Leon County.

Section 15 amends s. 215.82(2), F.S., to strike the reference to s. 338.227, F.S., and add a reference to the language in newly created s. 338.227(5), F.S.

Emergency Work Program Amendments (Section 10)

Present Situation:

The FDOT's Work Program

The FDOT is responsible for developing a five-year plan of transportation projects in partnership with other entities such as communities, metropolitan planning organizations, local governments, other state and federal agencies, modal partners, and regional entities. Each of the FDOT's districts develops a "district work program," which is a five-year listing of transportation projects planned for each fiscal year and submitted to the FDOT's central office for review. The central office then develops a "tentative work program" (TWP) based on the district work programs. The TWP is a future five-year listing of all projects planned for each fiscal year, setting forth all projects by phase to be undertaken during the ensuing fiscal year and planned for the successive four fiscal years. On July 1 of each year, the FDOT adopts the "adopted work program," (AWP) which is the five-year listing of all projects planned for each fiscal year, including the current fiscal year.[86]

The TWPs and AWPs must set out the proposed commitments and planned expenditures for the projects listed and be based on a complete, balanced financial plan.[87] Commitments[88] generally

[84] Emphasis added.
[85] *See* s. 215.82(2), F.S.
[86] *See* s. 339.135, F.S.
[87] Section 339.135(3)(a), F.S.
[88] The FDOT operates on a cash flow-commitment basis. Multi-year transportation projects begin before the total amount of cash is available to fund the entire project. Future revenues are used to pay for a project as actual expenditures occur. The

must be planned so as to deplete the estimated resources for the fiscal year.[89] Budgeting in excess of revenues received from various sources is prohibited.[90] The FDOT may include in each new TWP proposed changes to the projects contained in the previous AWP but is required to minimize changes to the four common fiscal years contained in the previous AWP and the new TWP.[91]

Amending the Adopted Work Program

The AWP may be amended, subject to certain procedures. The FDOT may amend the AWP to transfer fixed capital outlay appropriations for projects within the same appropriations category or between appropriations categories, including the following:

- To delete any project or project phase estimated to cost over $150,000;
- To add a project estimated to cost over $500,000;
- To advance or defer to another fiscal year a right-of-way phase, a construction phase, or a public transportation project phase estimated to cost over $1.5 million, with certain exceptions; or
- To advance or defer to another fiscal year any preliminary engineering phase or design phase estimated to cost over $500,000, with certain exceptions.[92, 93]

If the FDOT proposes any amendment to the AWP described above the FDOT must submit the proposed amendment to the Governor for approval.[94] The FDOT must notify:

- The chairs of the appropriations and transportation committees;
- Each member of the Legislature representing a district affected by the proposed amendment; and
- Each affected metropolitan planning organization (MPO) and unit of local government, if not notified in connection with the 14-day comment period.[95]

Current law prohibits the Governor from approving a proposed amendment until 14 days following the notification to the committee chairs, Legislative members, MPOs, and local governments.[96] If either of the appropriations committee chairs, the Senate President, or the House Speaker objects in writing to a proposed amendment within 14 days following the notification and specifies the reason for the objection, the Governor must disapprove the proposed amendment.[97]

FDOT measures and evaluates anticipated future revenues against total and planned project commitments. *See* the FDOT's *Work Program 101* computer based training available at: http://wbt.dot.state.fl.us/ois/WorkProgram101CBT/index.shtm. (Last visited December 2, 2016.)

[89] Section 339,135(3)(b), F.S.

[90] Section 339.315(3)(c), F.S.

[91] Section 339.315(4)(b)3., F.S.

[92] Section 339.135(7)(c), F.S.

[93] FDOT Districts may loan funds between districts, under specified conditions. Such loans constitute an amendment to the AWP per s. 339.135(7)(b), F.S., and are subject to the same budget amendment threshold amounts contained in s. 339.135(7)(c), F.S. The FDOT is required to index the thresholds to the Consumer Price Index or similar inflation indicators no more frequently than once a year, subject to specified notice and review procedures

[94] If the amendment deletes or defers a capacity project construction phase, affected counties and cities must be given a 14-day comment period prior to the amendment being submitted to the Governor. Section 339.135(7)(d)1., F.S.

[95] Section 339.135(7)(d)2., F.S.

[96] Section 339.135(7)(d)3., F.S.

[97] Section 339.135(7)(d)4., F.S.

Any work program amendment that also requires the transfer of fixed capital outlay[98] appropriations between categories within the FDOT, or the increase of an appropriation category, is subject to the approval of the Legislative Budget Commission (LBC), if not subject to legislation enacted in 2016.[99] The 2016 legislation required LBC approval of any work program amendment in excess of $3 million that also adds a new project, or phase thereof, to the AWP.[100]

Emergency Work Program Amendments

Recognizing that circumstances can arise that would make the above-described processes unworkable, existing law makes provision for emergencies. Notwithstanding the notification and approval requirements described above and the requirement for LBC review of amendments transferring fixed capital outlay appropriations between categories,[101] current law authorizes the FDOT secretary to request AWP amendments when an emergency[102] exists and the emergency relates to the repair or rehabilitation of any state transportation facility. The Governor may grant approval and amend the FDOT's approved budget if a delay due to the notification requirements described above would be detrimental to the interests of the state. The FDOT must immediately notify the committee chairs and the affected Legislative members, MPOs, and local governments, and provide written justification for the emergency action within seven days after approval.[103]

The FDOT notes that this exemption ensures that emergency repairs proceed quickly, protecting the safety and convenience of the traveling public.[104] However, when the 2016 legislation was enacted to require LBC approval of any work program amendment in excess of $3 million that also adds a new project, or phase thereof, to the AWP, no exception from the notification, approval, and LBC-review requirements was granted for emergencies. The FDOT seeks to clarify that emergency work program amendments are also exempt from the LBC approval requirement of the 2016 legislation. In Fiscal Year 2016-2017 so far, the FDOT advises only one work program amendment was submitted for LBC review that, under the proposed revision, would not have been submitted.[105]

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[98] Defined in s. 216.011(1)(p), F.S., to mean the appropriation category used to fund real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility, when appropriated by the Legislature in the fixed capital outlay appropriation category.

[99] Section 339.135(7)(g), F.S.

[100] Section 339.135(7)(h), F.S.

[101] Section 339.135(7)(e), F.S., also expressly notwithstands the provisions of s. 216.772(2), F.S., relating to certain other notice, review, and objection procedures with respect to appropriations, and s. 216.351, F.S., providing that subsequent inconsistent laws supersede that chapter only by express reference to that section,.

[102] Defined by s. 252.34(4), F.S., to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

[103] Current law prohibits amending the AWP for emergency purposes unless the FDOT's comptroller certifies the availability of sufficient funds. Section 339.135(7)(e), F.S.

[104] *See* the FDOT's 2017 Legislative Proposal, *Work Program Amendments-LBC/Emergency Projects*. (On file in the Senate Transportation Committee.)

[105] *See* the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)

Effect of Proposed Changes:

Section 10 amends s. 339.135(7)(e), F.S., relating to emergency amendment of the FDOT's work program, to insert a cross-reference to subsection (h), relating to the 2016 requirement for LBC review and approval of any work program amendment in excess of $3 million that also adds a new project, or phase thereof, to the AWP. This revision results in an exception to LBC review and approval of such amendments in the case of emergencies, under the conditions specified in current law.

Florida Highway Beautification Council Repeal/FDOT Grant Program (Section 11)

Present Situation:

The Council's Role

Section 339.2405, F.S., established the Florida Highway Beautification Council (Council) within the FDOT in 1987. The Council consists of seven members appointed by and serving at the pleasure of the Governor, with each chair selected by the Council members and serving a two-year term. Currently, all appointed members must be residents of this state. Of the seven members, two must be private citizens and one each must be:

- A licensed landscape architect;
- A representative of the Florida Federation of Garden Clubs, Inc.;
- A representative of the Florida Nurserymen and Grower Association;
- An FDOT representative designated by the FDOT secretary; and
- A representative of the Department of Agriculture and Consumer Services.

The Council is required to meet at least semiannually and may prescribe, amend, and repeal bylaws. The Council's duties are to:

- Provide information to local governments and local highway beautification councils about the state highway beautification grants program;
- Accept and review grant requests from local governments;
- Establish rules for evaluating and prioritizing the grant requests;
- Maintain a prioritized list of approved grant requests;
- Assess the feasibility of planting and maintain indigenous wildflowers and plants, instead of sod groundcovers, along the rights-of-way of state roads and highways;
- At the request of the FDOT secretary, review and make recommendations on any other highway beautification matters; and
- Annually submit to the FDOT secretary a proposal recommending the level of grant funding.

Local councils may be created by local governmental entities or by the Legislature. The local government or governments of the area in which the project is located must approve a grant request before its submission to the Council. After receiving recommendations from the Council, the FDOT secretary must award grants to local governmental entities in the order they appear on the Council's prioritized list and in accordance with available funding.[106]

[106] Section 334.044(26), F.S., requires the FDOT to allocate no less than 1.5 percent of the amount contracted for roadway and bridge construction projects for the purchase of plant materials. The FDOT advises that highway beautification grant funds are included in its calculation of the 1.5 percent requirement. *See* the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)

Beautification grants may be requested only for projects to beautify through landscaping roads on the State Highway System. A grant request must identify all costs associated with the project, including sprinkler systems, plant materials, equipment, and labor. Grant funds must provide for the costs of purchase and installation of a sprinkler system and the cost of plant materials and fertilizer. Grant funds may provide for the costs for labor associated with the installation of plantings.

Each local government that receives a grant is responsible for paying any costs for water, sprinkler system maintenance, and landscaped area maintenance in accordance with a maintenance agreement with the FDOT. Except as provided in the grant, each local government is also responsible for paying any costs for labor associated with plant installation. The FDOT is authorized to provide by contract services to maintain such landscaping at a level not to exceed the cost of routine maintenance of an equivalent un-landscaped area.

The FDOT's Role

The FDOT reports that each FDOT District appoints a District Highway Beautification Council Grant Manager (District Manager). The District Manager works with the District Landscape Architect and the State Transportation Landscape Architect (STLA), promoting the grant program and assisting applicants through the grant process. Each District Manager compiles and submits to the STLA a district-wide list of all applications received, and the STLA then compiles a statewide list. After the Council ranks each project, the STLA produces a Ranked Listing of the projects. Grants are awarded in the ranked order until the remaining budget is insufficient to fund the next ranked project.[107]

Recent Grant Funding and Council Expenses

The line items for highway beautification included in the FDOT's budget for the most recent five Fiscal Years is as follows:

Fiscal Year	Line-Item
2012-2013	$1,000,000
2013-2014	$1,000,000
2014-2015	$1,800,000
2015-2016	$1,817,000
2016-2017	$1,800,000[108]

The FDOT is required to provide staff support services to the Council. For Fiscal Years 2012-13 through 2016-17, the FDOT advises it expended $167,500 for administrative costs and travel to support the Council.[109]

[107] *See* the FDOT's 2017 Legislative Proposal, *Repeal of the Florida Highway Beautification Council*. (On file in the Senate Transportation Committee.)
[108] *Id.*
[109] *See* the FDOT's *Estimated Admin and Travel Expense to Administer the Grants*. (On file in the Senate Transportation Committee.)

Effect of Proposed Changes

The bill repeals the Florida Highway Beautification Council and creates the Florida Highway Beautification Grant Program within the FDOT, with the FDOT secretary awarding grants to local governmental entities for beautification of roads on the State Highway System based on the FDOT's prioritized list.

Section 11 amends s. 339.2405, F.S., creating the Grant Program within the FDOT and repealing all of the provisions relating to the Council, its membership, chair selection, meeting frequency, quorum requirements, compensation, and bylaws, etc.

The current Council duties are transferred to the FDOT, with the exception of assessing the feasibility of planting and maintaining indigenous wildflowers and plants, instead of sod groundcovers, using data from other states. The bill removes the required assessment, as it has been accomplished. The FDOT continues its efforts to improve aesthetics and driver safety while lowering maintenance costs through its Wildflower and Natural Areas Program.[110]

Also removed to conform to the repeal of the Council is its authorization to make recommendations on other highway beautification matters and direction to the FDOT secretary to provide staff support services to the Council. Authorization to create local councils remains in place. The FDOT would rank the requests, rather than the Council, and the FDOT secretary would award grants based on the FDOT's prioritized list of approved grant requests, until the remaining budget is insufficient to fund the next ranked project.

South Florida Regional Transportation Authority (SFRTA) Funding and Contracting (Sections 712-14 and 16)

Present Situation:

The SFRTA and Funding

The SFRTA, created in 2003, is an agency of the state established in part II of ch. 343, F.S. The governing body of ten voting members includes:

- One county commissioner each, elected by the county commission from Broward, Miami-Dade, and Palm Beach Counties;
- One citizen who is not a commission member, appointed by each county commission;
- An FDOT district secretary or his designee appointed by the FDOT secretary; and
- Three citizens appointed by the Governor.

Members serve four-year terms, except that the terms of the Governor's appointees must be concurrent.

The SFRTA is authorized to coordinate, develop, and operate a regional transportation system in the tri-county area of Broward, Miami-Dade, and Palm Beach Counties. The SFRTA provides commuter rail service (Tri-Rail) for residents and visitors in the area served. Statutory provisions

[110] *See* the FDOT website for further information on the current program, including links to the referenced report, a history of the program, the FDOT's current wildflower procedure, and other related details available at: http://www.fdot.gov/designsupport/wildflowers/default.shtm. (Last visited March 2, 2017.)

require each of the three counties served to provide no less than $2.67 million annually, dedicated by each governing body by October 1 of each year, which funds may be used for capital, operations, and maintenance.[111] Additionally, current law requires each county to annually fund SFRTA operations in an amount no less than $1.565 million.[112]

Further, if the SFRTA, by December 31, 2015, had not received federal matching funds based on the dedicated $2.67 million in tri-county funding, current law provides that funding is repealed. The SFRTA's 2016 Comprehensive Annual Financial Report reflects that the three counties contributed approximately $1.6 million each towards the SFRTA's operating budget in Fiscal Years 2015 and 2016.[113] Thus, it appears the SFRTA received no federal matching funds, and the counties are no longer required to provide the annual $2.67 million to the SFRTA.

The SFRTA is currently responsible for dispatching, maintenance, and inspection of the South Florida Rail Corridor.[114] Having assumed such responsibility, the FDOT is required to annually transfer to the SFRTA a total of $42.1 million as follows:

- $15 million for SFRTA operations, maintenance, and dispatch; and
- $27.1 million for operating assistance, corridor track maintenance, and contract maintenance for the SFRTA.[115]

According to a Florida Transportation Commission report, the FDOT has agreed to cover 100 percent of annual maintenance costs up to $14.4 million, with shared costs in excess of that amount, pursuant to an Operating Agreement between the FDOT and the SFRTA setting out agreed-upon percentages.[116] The SFRTA's 2016 Comprehensive Annual Financial Report indicates that of the $102,201,506 million in total revenue for 2016, the FDOT contributed $55,260,036 million or 54.1 percent.[117]

The FDOT's Oversight Role

The SFRTA may not commit any funds provided by the FDOT without the FDOT's approval. The FDOT may not unreasonably withhold approval. At least 90 days before advertising any procurement or renewing any existing contract using state funds for payment, the SFRTA must notify the FDOT of the proposed procurement or renewal and the proposed terms. If the FDOT objects in writing within 60 days of receipt of the notice, the SFRTA may not proceed. Failure of the FDOT to object within 60 days is deemed consent.[118] To enable the FDOT's evaluation of the SFRTA's proposed uses of state funds, the SFRTA must annually provide the FDOT with its proposed budget and with any additional documentation or information required by the FDOT.[119]

[111] Section 348.58(1), F.S.
[112] Section 348.58(3), F.S.
[113] *Supra* note 89.
[114] *Transportation Authority Monitoring and Oversight Fiscal Year 2015 Report,* pp. 197-199, available at: http://www.ftc.state.fl.us/documents/reports/TAMO/FY2015Report.pdf. (Last visited March 2, 2017.)
[115] Section 348.58(4)(a)1., F.S.
[116] *Supra* note 86, p. 197.
[117] At p. 25, available at: http://www.sfrta.fl.gov/docs/overview/Fiscal-Year-2016_Comprehensive-Annual-Financial-Report-FINAL.pdf. (Last visited March 2, 2017.)
[118] Section 348.58(4)(c)1., F.S.
[119] Section 348.58(4)(c)2., F.S.

Recent Contracting

According to the SFRTA, services for the operation of Tri-Rail are currently provided through four separate contracts covering train operations, maintenance of equipment, train dispatching, and station maintenance. Those contracts expire in June of this year. The SFRTA made a decision to bundle the four contracts into one and, on September 22, 2016, issued a Request for Proposals (RFP). Eighty percent of the scoring of the proposals was to be based on technical ability to do the work; 20 percent was to be based on price. The RFP cautioned proposers not to condition their prices. Proposals were due by December 16, 2016.[120]

According to the SFRTA, five of the six proposers submitted with their price proposals "extraneous" pages with labels such as "Proposal Exceptions," "Exceptions to RFP," and "Pricing Assumptions."[121] Other examples included pages indicating that their price did not include the cost of certain requirements in the RFP or that the price assumed facts that contradicted the RFP.[122] The SFRTA's procurement director determined five of the six proposers had materially and significantly conditioned their proposals — specifically, their price – and that the proposals were therefore nonresponsive and should be rejected, based on requirements in the RFP.[123]

On January 27, 2017, the SFRTA's governing board approved a Notice of Intent of Contract Award for Request for Proposal 16-010 "Operating Services," reflecting a determination to enter into a contract with an initial seven-year term, plus a three-year renewal option, for a price of $511,418,271.65.[124]

A request for an injunction to block Tri-Rail from awarding the contract was rejected following issuance of a temporary injunction to enable judicial review of allegations of unfair disqualification. The judge in the case ruled that the plaintiff failed to show any entitlement to a preliminary injunction and had not established a likelihood of success on the merits of their case." [125] Four of the five rejected bidders have timely filed a bid protest with the SFRTA, which is currently under review.[126]

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[120] *See* the SFRTA presentation to the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 16, 2017, available at: http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2017021204. (Last visited March 2, 2017.)
[121] *Id.* at (52:29).
[122] *Id.* at (53:18).
[123] *Id.* at (51:15).
[124] Available at: http://www.sfrta.fl.gov/docs/Procurement/Posting-Notice-Operating-Services.pdf. (Last visited March 3, 2017.)
[125] *See Transdev Services, Inc., et al., v. South Florida Regional Transportation Authority*, Case No.: 17-000877 CACE(21), Broward County Circuit Court, public copy available at: https://www.browardclerk.org/Web2/WebForms/Document.aspx?CaseID=ODc4NTc2MA%3d%3d-%2fxl4ct%2bcVyo%3d&CaseNumber=CACE17000877&FragmentID=MjM3NTk1MzQ%3d-tV6MANspieA%3d&DtFile=01/17/2017&DocName=Order&PgCnt=22&UserName=&UserType=Anonymous. (Last visited March 24, 2017.)
[126] Telephone conversation with the SFRTA staff, March 24, 2017.

The Florida Single Audit Act/Agreements Funded with Federal or State Assistance

Section 215.97, F.S., creates the Florida Single Audit Act. Among its stated purposes is to establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.

- "State financial assistance" is defined to mean state resources, not including federal financial assistance and state matching on federal programs, provided to a nonstate entity to carry out a state project, including the types of state resources stated in the rules of the Department of Financial Services established in consultation with all state awarding agencies. State financial assistance may be provided directly by state awarding agencies or indirectly by nonstate entities. The term does not include procurement contracts used to buy goods or services from vendors and contracts to operate state-owned and contractor-operated facility.
- "Nonstate entity" means a local government entity, higher education entity, nonprofit organization, or for-profit organization that receives state financial assistance.

Section 215.971, F.S., requires an agreement that provides state financial assistant to a recipient or subrecipient to include all of the following:

- A scope of work that clearly establishes the tasks to be performed;
- A division of the agreement into deliverables that must be received and accepted in writing by the agency before payment. Deliverables must be directly related to the scope of work. The agreement must specify the required minimum level of service to be performed and criteria for evaluating completion of each deliverable;
- Specification of the financial consequences for failure to perform the minimum level of service.
- Specification that a recipient may expend funds only for allowable costs, and that any balance of unobligated funds and any funds paid in excess of the amount to which the recipient is entitled must be refunded to the state agency; and
- Any additional information required by the Florida Single Audit Act.

In 2016, the FDOT's Inspector General engaged in an effort "to determine the nature and extent of SFRTA's expenditures and whether their financial records were in compliance with applicable laws, rules, and regulations."[127] Based on the SFRTA's response, the Inspector General requested a determination from the Department of Financial Services whether appropriations to the SFRTA constitute "state financial assistance."[128] The Inspector General's report found:

> SFRTA, as determined by the Department of Financial Services (DFS), is a Special District and a nonstate entity that is a recipient of state financial

[127] *See Audit Report No. 141-4002*, available at: http://www.fdot.gov/ig/Reports/14I-4002%20Final.pdf. (Last visited March 18, 2017.)
[128] *Audit Report* at 7.

> assistance.[129] We determined the Operating Agreement[130] between SFRTA and the department does not fully comply with mandatory provisions required by Section 215.971, F.S. nor does it contain the procurement provisions outlined in Chapter 287, F.S. We also determined $153 million of state appropriations was omitted from audit coverage in accordance with the Florida Single Audit Act for fiscal years 2010/11 to 2014/15. Additionally, SFRTA did not provide a standard operating budget-to-actual expenditure report based upon the use of each grant or funding source.[131]

Effect of Proposed Changes:

The bill places restrictions on the SFRTA's contracting authority and use of state funds and revises the FDOT's oversight role.

Section 13 amends s. 343.54, F.S., to prohibit the SFRTA from entering into, extending, or renewing any contract or other agreement under that part without the FDOT's prior review and written approval of the SFRTA's proposed expenditures, if such contract or agreement may be funded, in whole or in part, with FDOT-provided funds. The prohibition applies notwithstanding any provision of that part, which contains the SFRTA's authorization to enter into contracts. The SFRTA must obtain the FDOT's approval, under the funding condition specified, to enter into, extend, or renew any contract or other agreement.

Section 14 amends s. 343.48(4)(c)1., F.S., to remove the current statutory language:

- Prohibiting the FDOT from unreasonably withholding its approval of the SFRTA's commitment of FDOT-provided funds;
- Requiring the SFRTA to notify the FDOT of a proposed procurement or renewal before advertising any procurement or renewing any existing contract that will rely on state funds;
- Requiring the FDOT to object in writing and, if timely, prohibiting the SFRTA from proceeding with the procurement or renewal;
- Providing that the FDOT's failure to timely object constitutes consent; and
- Providing no-impairment-of-contract language for contracts existing as of June 30, 2012.

This section replaces the notice and objection process with language deeming funds provided to the authority by the FDOT under that section to be state financial assistance provided to a

[129] The DFS determined the SFRTA had for nine years submitted financial audit reports per s. 28.39, F.S., as a special district; that a special district as defined by statute is a unit of government created for a special purpose by a special act with jurisdiction to operate within a limited geographic boundary; that the SFRTA was created by the South Florida Regional Transportation Authority Act for the special purpose of operating and managing a transit system in Broward, Miami-Dade and Palm Beach Counties; and that the law limits operations to those counties. The DFS also noted the SFRTA is a state project (a state program that provides state financial assistance to a nonstate organization) that must be assigned a Catalog of State Financial Assistance number and, finally, since state law created the SFRTA to carry out a state project, the SFRTA is a recipient of state financial assistance. *Audit Report,* Appendix J.

[130] The report notes a June 2013 operating agreement between the FDOT and the SFRTA for continuing SFRC operating rights for a 14-year period that included SFRTA's agreement to conduct all activities in accordance with applicable federal and state laws and regulations and the operating rules, policies, and procedures adopted pursuant to such laws and regulations. *Id.* at 5.

[131] *Audit Report* at 1.

nonstate entity to carry out a state project subject to the provisions of ss. 215.97 and 215.971, F.S. The FDOT is directed to provide the funds in accordance with the terms of a written agreement to be entered into between the SFRTA and the FDOT. The agreement must provide for FDOT review, approval, and audit of the SFRTA's expenditure of such funds and must include such other provisions as are required by applicable law. The FDOT is expressly authorized to advance the SFRTA one-fourth of the total funding provided under that section for a state fiscal year at the beginning of each state fiscal year. Thereafter, the bill requires monthly payments over the fiscal year on a reimbursement basis as supported by invoices and such additional documentation and information as the FDOT may reasonably require, and a reconciliation of the advance against remaining invoices in the last quarter of the fiscal year.

This section of the bill also modifies the SFRTA's existing obligation to provide the FDOT with its proposed budget and any additional documentation or information required by the FDOT for its evaluation of SFRTA-proposed uses of state funds by requiring the SFRTA to *promptly* provide such documentation or information.
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Section 12 amends s. 343.52, F.S., to define "department" within Part II of ch. 343, F.S. to mean the Department of Transportation.

Section 16 of the bill amends s. 343.53, F.S., revising a cross-reference to conform to changes made in the act.

Transportation Disadvantaged Services/Transportation Network Companies (Section 17)

Present Situation:

The Legislature created the Transportation Disadvantaged (TD) Program in Part I of ch. 427, F.S., in 1979.[132] The TD Program coordinates a network of local and state programs providing transportation services for elderly, disabled, and low-income citizens. In 1989, the Legislature created the Commission for the Transportation Disadvantaged (commission) as an independent entity within the Florida Department of Transportation.[133] The purpose of the commission is to accomplish the coordination of transportation services provided to the transportation disadvantaged,[134] with the goal of such coordination to assure the cost-effective provision of transportation by qualified community transportation coordinators[135] or transportation operators.[136] The commission describes the program as "a shared-ride service which, depending

[132] 79-180, L.O.F.
[133] 89-376, L.O.F.
[134] A "transportation disadvantaged person" is a person who because of physical or mental disability, income status, or age is unable to transport himself or herself or to purchase transportation and is, therefore, dependent on others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk as defined in s. 411.202, F.S.Section 427.011(1), F.S.
[135] Section 427.011(5), F.S.
[136] A "transportation operator" is one or more public, private for-profit, or private nonprofit entities engaged by the community transportation coordinator to provide service to transportation disadvantaged persons pursuant to a coordinated system service plan. Section 427.011(6), F.S.

on location, may be provided using the fixed route transit or paratransit (door-to-door) service."[137]

Section 427.011(9), F.S., defines "paratransit" to mean those elements of public transit that provide service between specific origins and destinations selected by the individual user with such service being provided at a time agreed upon by the user and provider of the service. That section also specifies that paratransit services are provided by taxis, limousines, "dial-a-ride," buses, and other demand-responsive operations characterized by their nonscheduled, nonfixed route nature. Paratransit service has its own challenges, however, such as waiting long periods of time for a ride home after a doctor's visit or problems getting to a fixed route stop.

Some communities are employing TNCs, such as Uber, Lyft, and SideCar, to improve mobility for transportation disadvantaged persons. For example, the Massachusetts Bay Transportation Authority partnered with Uber and Lyft to provide paratransit services.[138] Here in Florida, the Pinellas Suncoast Transit Authority (PSTA) recently expanded a small pilot project to the entire county. Branded as Direct Connect, the program is designed to give low-cost rides to designated bus stops using Uber, United Taxi, and Lyft.[139] However, current state law does not expressly include TNCs as a provider of transportation disadvantaged services.

Effect of Proposed Changes:

Section 17 amends s. 427.011, F.S., to re-order the definitions alphabetically, re-numbering current subsection (9) as subsection (7), and includes TNCs as a provider of paratransit service, thereby allowing TNCs to provide transportation disadvantaged services.

Federal Pilot Program Enrollment

Present Situation:

Section 334.044, F.S., sets out a number of the FDOT's powers and duties. Among those are the FDOT's power and duty to:

- Conduct research studies and collect data necessary for the improvement of the state transportation system;
- Conduct research and demonstration projects relative to innovative transportation technologies; and
- Identify, obtain, and administer all federal funds available to the FDOT for all transportation purposes.

Effect of Proposed Changes:

Section 18 of the bill creates an unspecified section of Florida law authorizing the Secretary of Transportation to enroll the State of Florida in any federal pilot program or project for the

[137]*See* the Commission's website available at: http://www.fdot.gov/ctd/communitytransystem.htm. (Last visited March 27, 2017.)
[138]*See Uber, Lyft partner with transportation authority to offer paratransit customers service in Boston*, available at: https://www.washingtonpost.com/news/dr-gridlock/wp/2016/09/16/uber-lyft-partner-with-city-to-offer-paratransit-customers-on-demand-service-in-boston/?utm_term=.0a9f1dca38bb. (Last visited April 13, 2017.
[139]*See PSTA Expands Partnership with Uber, Lyft Across Pinellas County,* available at: https://patch.com/florida/stpete/psta-expands-partnership-uber-lyft-across-pinellas-county. (Last visited April 14, 2017.)

collection and study of data for the review of federal or state roadway safety, infrastructure sustainability, congestion mitigation, transportation system efficiency, autonomous vehicle technology, or capacity challenges.

While research reveals no provision of law expressly authorizing the FDOT to enroll the state in any federal pilot program or project, the FDOT's existing powers and duties appear to grant sufficient authority for the FDOT to enroll the state in a federal pilot program or project relating to the collection and study of data for review of the identified subject matters.

Section 19 provides the act take effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Article VII, s. 18(d) of the Florida Constitution provides laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

An exemption from the mandates provision may apply if the expected fiscal impact on municipalities/counties is less than $2 million. Because the fiscal impact is anticipated to be less than $2 million, the bill appears to be exempt from the mandate requirements.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions relating to highway memorial markers and incorporation of emblems of belief may be subject to challenge under the First Amendment of the U.S. Constitution.[140]If such a legal challenge is made, case law does not provide clear direction as to the legal standard to be used as different "tests" of constitutionality have been applied in establishment clause cases based on various fact patterns leading to an inconsistency in results.[141]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 2: The trucking industry may realize an insignificant positive fiscal impact resulting from the additional weight allowance for natural gas vehicles due to potentially fewer overweight citations.

Section 3: Riders in autonomous vehicles used by TNCs to provide transportation may benefit from the bill's required insurance coverage. The insurance industry may benefit from increased sales.

Section 7: Applicants requesting memorial markers incorporating emblems of belief may be required to pay the fee to be set by the FDOT to offset production costs.
Section 8: The FDOT notes an indeterminate positive fiscal impact to the extent a private sector company is awarded a fast response contract and is not required to obtain a surety bond.[142]

C. Government Sector Impact:

Section 2: The FDOT may realize a loss of revenues relating to fewer overweight citations being written. This revenue loss may be offset to an extent by reduced regulatory costs. A potential withholding of federal funds is avoided.

Section 6: The FDOT will incur additional administrative expenses associated with developing the federally required bridge inspection policies and criteria, seeking FHWA approval, and revising relevant policies and procedures, which expenses are expected to be absorbed within existing resources. The FDOT expects cost savings to the extent the FHWA approves bridges for extended inspection frequencies. The FDOT estimates

[140] Congress shall make no law respecting an establishment of religion…." U.S. Const. amend. I.
[141] *Utah Highway Patrol Association v. American Atheists, Inc.*, decided October 31, 2011, available at: https://www.supremecourt.gov/opinions/11pdf/10-1276.pdf. (Last visited April 5, 2017.)
[142] *See* the FDOT's 2017 Legislative Proposal, *Rapid Response Contracts – Price Cap Increase*. (On file in the Senate Transportation Committee.)

approximately $500,000 in inspection services could be redirected to bridge repair, rehabilitation, and/or replacement.[143]

Section 7: The FDOT may experience administrative expenses associated with the memorial marker program, offset by the authorized fee for markers incorporating emblems of belief, in an indeterminate amount.

Section 9: The DBF may avoid some costs if it is not required to validate turnpike revenue bonds.

Section 11: Based on costs for Fiscal Years 2012-13 through 2016-17, the FDOT is expected to realize a positive fiscal impact of approximately $33,400 annually resulting from repeal of the Florida Highway Beautification Council, due to removal of the FDOT's duty to provide for administrative costs and travel to support the Council. The FDOT will absorb administrative expenses associated with revising Rule Chapter 14-40, F.A.C., and implementing the grant program, within existing resources.

Sections 13 and 14: The FDOT and the SFRTA may incur additional administrative expenses associated with the FDOT's review, written approval, and audit of the SFRTA's proposed expenditures using any funding provided to the SFRTA under s. 343.58(4), F.S., as well as administrative expenses associated with the requires reimbursement and reconciliation process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 316.545, 335.074, 337.11, 338.227, 339.135, 339.2405, 343.52, 343.54, 343.58, 215.82, and 343.53.

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 committee substitute:

- Directs the FDOT, in consultation with the Department of Highway Safety and Motor Vehicles (DHSMV), to develop a Florida Smart City Challenge grant program;

[143] *See* the FDOT's 2017 Legislative Proposal, *Bridge Inspection Frequency*. (On file in the Senate Transportation Committee.)

- Revises autonomous vehicle alert system requirements, consistent with current law, to clarify that an autonomous vehicle may operate in autonomous mode without a person physically present in the vehicle;
- Directs the FDOT to establish a process for applications for placement of roadside memorial markers at or near the location of traffic-related fatalities on the State Highway System to raise public awareness and remind motorists to drive safely.
- Applies certain insurance coverage requirements, should legislation addressing insurance for transportation network companies (TNCs) become law, to autonomous vehicles used by TNCs to provide transportation, regardless of whether a human operator is physically present in the vehicle when the ride occurs;
- Removes the provisions requiring the SFRTA to terminate the Operating Services contract and:
  - Deems funds provided by the FDOT to the SFRTA to be state financial assistance subject to specified accountability requirements;
  - Requires the FDOT to provide funds to the SFRTA in accordance with a written agreement containing certain provisions;
  - Authorizes the FDOT to advance funds to the SFRTA at the start of each fiscal year, with monthly payments for maintenance and dispatch on the South Florida Rail Corridor over the fiscal year on a reimbursement basis;
- Expressly includes transportation network companies (TNCs) in the list of providers of services for the transportation disadvantaged; and
- Authorizes the FDOT Secretary to enroll the state in any federal pilot program or project for the collection and study of specified types of transportation-related data.

CS by Transportation March 28, 2017:
A technical amendment to the original bill was adopted to clarify that the 2,000-pound weight allowance for natural gas-powered trucks is in addition to the 500-pound weight allowance for idle reduction technology.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 134 and 135
insert:

Section 1. Subsection (1) and paragraph (a) of subsection (4) of section 20.23, Florida Statutes, are amended to read:

20.23 Department of Transportation.—There is created a Department of Transportation which shall be a decentralized agency.

(1)(a) The Department of Transportation shall consist of:


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1. A central office that establishes policies and procedures; and

2. Districts that carry out projects as authorized or required under the policies and procedures implemented by the central office pursuant to paragraph (3)(a).

(b) ~~(a)~~ The head of the Department of Transportation is the Secretary of Transportation. The secretary shall be appointed by the Governor from among three persons nominated by the Florida Transportation Commission and shall be subject to confirmation by the Senate. The secretary shall serve at the pleasure of the Governor.

(c) ~~(b)~~ The secretary shall be a proven, effective administrator who by a combination of education and experience shall clearly possess a broad knowledge of the administrative, financial, and technical aspects of the development, operation, and regulation of transportation systems and facilities or comparable systems and facilities.

(d) ~~(c)~~ The secretary shall provide to the Florida Transportation Commission or its staff~~,~~ such assistance, information, and documents as are requested by the commission or its staff to enable the commission to fulfill its duties and responsibilities.

(e) ~~(d)~~ The secretary may appoint up to three assistant secretaries who shall be directly responsible to the secretary and who shall perform such duties as are assigned by the secretary. The secretary shall designate to an assistant secretary the duties related to enhancing economic prosperity, including, but not limited to, the responsibility of liaison with the head of economic development in the Executive Office of


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the Governor. Such assistant secretary shall be directly responsible for providing the Executive Office of the Governor with investment opportunities and transportation projects that expand the state's role as a global hub for trade and investment and enhance the supply chain system in the state to process, assemble, and ship goods to markets throughout the eastern United States, Canada, the Caribbean, and Latin America. The secretary may delegate to any assistant secretary the authority to act in the absence of the secretary.

(f)1.~~(c)~~ Any secretary appointed after July 1, 2019 ~~5, 1989~~, and the assistant secretaries are ~~shall be~~ exempt from ~~the provisions of~~ part III of chapter 110 and shall receive compensation commensurate with their qualifications and competitive with compensation for comparable responsibility in other public sector organizations and in the private sector.

2. The salaries of the secretary and the assistant secretaries shall be established by the Florida Transportation Commission and determined by a market analysis focused on comparably skilled individuals in other public sector organizations, including, but not limited to, expressway authorities, aviation authorities, and port authorities, and on comparably skilled individuals in the private sector. The market analysis must serve as a basis for ascertaining compensation levels required to retain the secretary and assistant secretaries in their positions within the department and to attract external talent that can fulfill the department's mission and effect change. The salary of the secretary must be at least $180,000. The salary of an assistant secretary must be 10 percent below that of the secretary who appoints him or her.

(4)(a)1. The operations of the department shall be organized into seven districts, each headed by a district secretary, and a turnpike enterprise and a rail enterprise, each enterprise headed by an executive director. The district secretaries and the executive directors shall be registered professional engineers in accordance with ~~the provisions of~~ chapter 471 or the laws of another state, or, in lieu of professional engineer registration, a district secretary or executive director may hold an advanced degree in an appropriate related discipline, such as a Master of Business Administration.

2. The district secretaries and the executive director of the turnpike enterprise are exempt from part III of chapter 110 and shall receive compensation commensurate with their qualifications and competitive with compensation for comparable responsibility in other public sector organizations and in the private sector. The salaries of the district secretaries and the executive director of the turnpike enterprise must be 15 percent below that of the secretary, as determined under subparagraph (1)(f)2., who is head of the department at the time the district secretaries and the executive director of the turnpike enterprise take their positions.

3. The headquarters of the districts shall be located in Polk, Columbia, Washington, Broward, Volusia, Miami-Dade, and Hillsborough Counties. The headquarters of the turnpike enterprise shall be located in Orange County. The headquarters of the rail enterprise shall be located in Leon County. In order to provide for efficient operations and to expedite the decisionmaking process, the department shall provide for maximum decentralization to the districts.

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

100 And the title is amended as follows:

101 Delete line 2

102 and insert:

103 An act relating to transportation; amending s. 20.23,
104 F.S.; requiring the Department of Transportation to
105 consist of a central office and districts, subject to
106 certain requirements; providing that any secretary
107 appointed after a specified date and the assistant
108 secretaries are exempt from membership in the Senior
109 Management Service System Class; requiring the
110 secretary and assistant secretaries to receive
111 compensation competitive with compensation for
112 comparable responsibility in other public sector
113 organizations; requiring that the salaries of the
114 secretary and the assistant secretaries be established
115 by the Florida Transportation Commission and
116 determined by a certain market analysis, subject to
117 certain requirements; providing minimum specified
118 salaries for the secretary and assistant secretaries;
119 providing that the district secretaries and the
120 executive director of the turnpike enterprise are
121 exempt from membership in the Senior Management
122 Service System Class; requiring that the district
123 secretaries receive compensation commensurate with
124 their qualifications and competitive with compensation
125 for comparable responsibility in other public sector
126 organizations and in the private sector; providing

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salary requirements for the district secretaries;

creating s.

408222

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment (with title amendment)

Between lines 134 and 135
insert:

Section 1. Subsection (1) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a

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subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties or municipalities authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) ~~CHARTER~~ COUNTY, MUNICIPALITY, AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(a) Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, ~~and~~ each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343 or chapter 349, and each municipality and county under paragraph (b) may levy a discretionary sales surtax, subject to approval by a majority vote of the electorate of the county or municipality or by a charter amendment approved by a majority vote of the electorate of the county.

(b)1. A municipality with a population greater than 270,000 located in a county with a population greater than 1.28 million but less than 1.5 million may levy a discretionary sales surtax as provided in this subsection. The discretionary sales surtax may only be levied within the limits of the municipality.

2. The levy of a discretionary sales surtax pursuant to this paragraph does not prohibit the county in which the municipality is located from levying a discretionary sales

surtax as otherwise provided in this section. If a municipality has levied a discretionary sales surtax as described in this paragraph, the county within which the municipality is located may also levy a discretionary sales surtax, at the same level as the municipality, pursuant to referendum of the voters of the county who reside outside the municipality. The proceeds from such a discretionary sales surtax may only be collected outside the municipality limits. Alternatively, the municipality and county, by interlocal agreement, may levy such a discretionary sales surtax by referendum of all the voters of the county.

(c) ~~(b)~~ The rate of the discretionary sales surtax shall be up to 1 percent.

(d) ~~(c)~~ The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county or municipality accounts shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body.

(e) ~~(d)~~ Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission or municipal governing body deems appropriate:

1. Deposited by the county or municipality in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide or municipality-wide bus system, on-demand transportation services, and related costs of a fixed guideway rapid transit system;

2. Remitted by the governing body of the county or municipality to an expressway, transit, or transportation

authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads or bridges in the county or municipality, for the operation and maintenance of a bus system, for the operation and maintenance of on-demand transportation services, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission or municipal governing body, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges;

3. Used by the county or municipality for the development, construction, operation, and maintenance of roads and bridges in the county or municipality; for the expansion, operation, and maintenance of bus and fixed guideway systems; for the expansion, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county or municipality for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and

4. Used by the county or municipality for the planning, development, construction, operation, and maintenance of roads and bridges in the county or municipality; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; for the planning, development,

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construction, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county or municipality for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph. Any county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed.

(f) ~~(e)~~ As used in this subsection, the term "on-demand transportation services" means transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to transportation; amending s. 212.055, F.S.; requiring certain enactments to specify the types of municipalities authorized to levy a discretionary sales surtax; authorizing certain municipalities to levy a certain discretionary sales surtax; providing requirements for the discretionary sales surtax; providing that the levy of the discretionary sales surtax does not prohibit the county in which the municipality is located from levying a certain discretionary sales surtax; authorizing the county within which the municipality is located to also levy a discretionary sales surtax, at the same level as the municipality, pursuant to a referendum of the voters of the county who reside outside the municipality; providing that the county discretionary sales surtax may be collected only outside the municipality limits; authorizing, alternatively, the municipality and county, by interlocal agreement, to levy such a discretionary sales surtax by referendum of all the voters of the county; requiring the proposal to adopt a discretionary sales surtax and to create a trust fund within the municipality accounts to be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body; providing that proceeds from the surtax shall be applied to specified uses in whatever combination the municipal governing body deems appropriate; conforming provisions to changes made by the act; creating s.

463056

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/28/2017	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 135 - 734
and insert:
Section 1. Present subsections (51) through (97) of section 316.003, Florida Statutes, are renumbered as subsections (53) through (99), respectively, present subsections (40), (55), and (95) are amended, and new subsections (51) and (52) are added to that section, to read:
316.003 Definitions.—The following words and phrases, when

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used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(40) MOTOR VEHICLE.—Except when used in s. 316.1001, a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, personal delivery device, swamp buggy, or moped. For purposes of s. 316.1001, "motor vehicle" has the same meaning as provided in s. 320.01(1)(a).

(51) PERSONAL DELIVERY DEVICE.—An electrically powered device that:

(a) Is operated on sidewalks and crosswalks and intended primarily for transporting property;

(b) Weighs less than 80 pounds, excluding cargo;

(c) Has a maximum speed of 10 miles per hour; and

(d) Is equipped with technology to allow for operation of the device with or without the active control or monitoring of a natural person.

A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle.

(52) PERSONAL DELIVERY DEVICE OPERATOR.—An entity or its agent that exercises direct physical control over or monitoring of the navigation system and operation of a personal delivery device. For the purposes of this subsection, the term "agent" means a person charged by the entity with the responsibility of navigating and operating the personal delivery device. The term "personal delivery device operator" does not include an entity or person who requests the services of a personal delivery

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device for the purpose of transporting property or an entity or person who only arranges for and dispatches the requested services of a personal delivery device.

(57) ~~(55)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (79)(b) ~~(77)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(97) ~~(95)~~ VEHICLE.—Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices and devices used exclusively upon stationary rails or tracks.

Section 2. Subsection (7) of section 316.008, Florida Statutes, is amended to read:

316.008 Powers of local authorities.—

(7)(a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

(b)1. Except as provided in subparagraph 2., a personal delivery device may be operated on sidewalks and crosswalks within a county or municipality when such use is permissible under federal law. This paragraph does not restrict a county or municipality from otherwise adopting regulations for the safe operation of personal delivery devices.

2. A personal delivery device may not be operated on the

Florida Shared-Use Nonmotorized Trail Network created under s. 339.81 or components of the Florida Greenways and Trails System created under chapter 260.

Section 3. Section 316.0898, Florida Statutes, is created to read:

316.0898 Florida Smart City Challenge grant program.—

(1) The Department of Transportation, in consultation with the Department of Highway Safety and Motor Vehicles, shall develop the Florida Smart City Challenge grant program and shall establish grant award requirements for municipalities or regions for the purpose of receiving grant awards. Grant applicants must demonstrate and document the adoption of emerging technologies and their impact on the transportation system and must address at least the following focus areas:

(a) Autonomous vehicles.

(b) Connected vehicles.

(c) Sensor-based infrastructure.

(d) Collecting and using data.

(e) Electric vehicles, including charging stations.

(f) Developing strategic models and partnerships.

(2) The goals of the grant program include, but are not limited to:

(a) Identifying transportation challenges and identifying how emerging technologies can address those challenges.

(b) Determining the emerging technologies and strategies that have the potential to provide the most significant impacts.

(c) Encouraging municipalities to take significant steps to integrate emerging technologies into their day-to-day operations.

(d) Identifying the barriers to implementing the grant program and communicating those barriers to the Legislature and appropriate agencies and organizations.

(e) Leveraging the initial grant to attract additional public and private investments.

(f) Increasing the state's competitiveness in the pursuit of grants from the United States Department of Transportation, the United States Department of Energy, and other federal agencies.

(g) Committing to the continued operation of programs implemented in connection with the grant.

(h) Serving as a model for municipalities nationwide.

(i) Documenting the costs and impacts of the grant program and lessons learned during implementation.

(j) Identifying solutions that will demonstrate local or regional economic impact.

(3) The Department of Transportation shall develop eligibility, application, and selection criteria for the program grants and a plan for the promotion of the grant program to municipalities or regions of this state as an opportunity to compete for grant funding, including the award of grants to a single recipient and secondary grants to specific projects of merit within other applications. The Department of Transportation may contract with a third party that demonstrates knowledge and expertise in the focuses and goals of this section to provide guidance in the development of the requirements of this section.

(4) On or before January 1, 2018, the Department of Transportation shall submit the grant program guidelines and


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plans for promotion of the grant program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) This section expires July 1, 2018.

Section 4. Section 316.2071, Florida Statutes, is created to read:

316.2071 Personal delivery devices.—

(1) Notwithstanding any provision of law to the contrary, a personal delivery device may operate on sidewalks and crosswalks, subject to s. 316.008(7)(b). A personal delivery device operating on a sidewalk or crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances, except that the personal delivery device must not unreasonably interfere with pedestrians or traffic and must yield the right-of-way to pedestrians on the sidewalk or crosswalk.

(2) A personal delivery device must:

(a) Obey all official traffic and pedestrian control signals and devices.

(b) Include a plate or marker that has a unique identifying device number and identifies the name and contact information of the personal delivery device operator.

(c) Be equipped with a braking system that, when active or engaged, enables the personal delivery device to come to a controlled stop.

(3) A personal delivery device may not:

(a) Operate on a public highway except to the extent necessary to cross a crosswalk.

(b) Operate on a sidewalk or crosswalk unless the personal

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delivery device operator is actively controlling or monitoring the navigation and operation of the personal delivery device.

(c) Transport hazardous materials as defined in s. 316.003.

(4) A personal delivery device operator must maintain an insurance policy, on behalf of itself and its agents, that provides general liability coverage of at least $100,000 for damages arising from the combined operations of personal delivery devices under the entity's or agent's control.

Section 5. Paragraph (b) of subsection (2) of section 316.545, Florida Statutes, is amended, and present paragraphs (c) and (d) of subsection (3) of that section are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to that subsection, to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(2)

(b) The officer or inspector shall inspect the license plate or registration certificate of the commercial vehicle to determine whether its gross weight is in compliance with the declared gross vehicle weight. If its gross weight exceeds the declared weight, the penalty shall be 5 cents per pound on the difference between such weights. In those cases when the commercial vehicle is being operated over the highways of the state with an expired registration or with no registration from this or any other jurisdiction or is not registered under the applicable provisions of chapter 320, the penalty herein shall apply on the basis of 5 cents per pound on that scaled weight which exceeds 35,000 pounds on laden truck tractor-semitrailer combinations or tandem trailer truck combinations, 10,000 pounds

on laden straight trucks or straight truck-trailer combinations, or 10,000 pounds on any unladen commercial motor vehicle. A driver of a commercial motor vehicle entering the state at a designated port-of-entry location, as defined in s. 316.003 ~~316.003(54)~~, or operating on designated routes to a port-of-entry location, who obtains a temporary registration permit shall be assessed a penalty limited to the difference between its gross weight and the declared gross vehicle weight at 5 cents per pound. If the license plate or registration has not been expired for more than 90 days, the penalty imposed under this paragraph may not exceed $1,000. In the case of special mobile equipment, which qualifies for the license tax provided for in s. 320.08(5)(b), being operated on the highways of the state with an expired registration or otherwise not properly registered under the applicable provisions of chapter 320, a penalty of $75 shall apply in addition to any other penalty which may apply in accordance with this chapter. A vehicle found in violation of this section may be detained until the owner or operator produces evidence that the vehicle has been properly registered. Any costs incurred by the retention of the vehicle shall be the sole responsibility of the owner. A person who has been assessed a penalty pursuant to this paragraph for failure to have a valid vehicle registration certificate pursuant to the provisions of chapter 320 is not subject to the delinquent fee authorized in s. 320.07 if such person obtains a valid registration certificate within 10 working days after such penalty was assessed.

(3)

(c)1. For a vehicle fueled by natural gas, the fine is

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calculated by reducing the actual gross vehicle weight by the certified weight difference between the natural gas tank and fueling system and a comparable diesel tank and fueling system. Upon the request of a weight inspector or a law enforcement officer, the vehicle operator shall present a written certification that identifies the weight of the natural gas tank and fueling system and the difference in weight of a comparable diesel tank and fueling system. The written certification must originate from the vehicle manufacturer or the installer of the natural gas tank and fueling system.

2. The actual gross vehicle weight for vehicles fueled by natural gas may not exceed 82,000 pounds, excluding the weight allowed for idle-reduction technology under paragraph (b).

3. This paragraph does not apply to vehicles described in s. 316.535(6).

Section 6. Effective upon the same date that SB 340 or similar legislation takes effect, if such legislation is adopted in the 2017 Regular Session or any extension thereof and becomes a law, section 316.851, Florida Statutes, is created to read:

316.851 Autonomous vehicles; providing prearranged rides.—

(1) An autonomous vehicle used by a transportation network company to provide a prearranged ride must be covered by automobile insurance as required by s. 627.748, regardless of whether a human operator is physically present within the vehicle when the ride occurs. When an autonomous vehicle is logged on to a digital network but is not engaged in a prearranged ride, the autonomous vehicle must maintain insurance coverage as defined in s. 627.748(7)(b).

(2) An autonomous vehicle used to provide a transportation

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service shall carry in the vehicle proof of coverage satisfying the requirements of this section at all times while operating in autonomous mode.

Section 7. Section 316.853, Florida Statutes, is created to read:

316.853 Automated mobility districts.—

(1) For the purpose of this section, an "automated mobility district" means a master planned development or combination of contiguous developments in which the deployment of autonomous vehicles as defined in s. 316.003 as the basis for a shared mobility system is a stated goal or objective of the development or developments.

(2) The Department of Transportation shall designate automated mobility districts.

(3) In determining the eligibility of a community for designation as an automated mobility district, the Department of Transportation shall consider applicable criteria from federal agencies for automated mobility districts and apply those criteria to eligible developments in this state.

Section 8. Paragraph (a) of subsection (1) of section 319.145, Florida Statutes, is amended to read:

319.145 Autonomous vehicles.—

(1) An autonomous vehicle registered in this state must continue to meet applicable federal standards and regulations for such motor vehicle. The vehicle must:

(a) Have a system to safely alert the operator if an autonomous technology failure is detected while the autonomous technology is engaged. When an alert is given, the system must:

1. Require the operator to take control of the autonomous

vehicle; or

2. If the human operator does not, or is not able to, take control of the autonomous vehicle, or if a human operator is not physically present in the vehicle, be capable of bringing the vehicle to a complete stop.

Section 9. Paragraph (a) of subsection (1) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) "Motor vehicle" means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, personal delivery devices as defined in s. 316.003, special mobile equipment as defined in s. 316.003, vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.

Section 10. Subsection (19) is added to section 320.02, Florida Statutes, to read:

320.02 Registration required; application for registration; forms.—

(19) A personal delivery device as defined in s. 316.003 is not required to satisfy the registration and insurance requirements of this section.

Section 11. Subsection (1) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for

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the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) MOTOR VEHICLE.—Every self-propelled vehicle that ~~which~~ is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle that ~~which~~ is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any personal delivery device as defined in s. 316.003, bicycle, or moped. However, the term "motor vehicle" does ~~shall~~ not include a ~~any~~ motor vehicle as defined in s. 627.732(3) when the owner of such vehicle has complied with the requirements of ss. 627.730-627.7405, inclusive, unless the provisions of s. 324.051 apply; and, in such case, the applicable proof of insurance provisions of s. 320.02 apply.

Section 12. Paragraph (a) of subsection (2) of section 324.022, Florida Statutes, is amended to read:

324.022 Financial responsibility for property damage.—

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

(a) "Motor vehicle" means any self-propelled vehicle that has four or more wheels and that is of a type designed and required to be licensed for use on the highways of this state, and any trailer or semitrailer designed for use with such vehicle. The term does not include:

1. A mobile home.

2. A motor vehicle that is used in mass transit and designed to transport more than five passengers, exclusive of


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the operator of the motor vehicle, and that is owned by a municipality, transit authority, or political subdivision of the state.

3. A school bus as defined in s. 1006.25.

4. A vehicle providing for-hire transportation that is subject to the provisions of s. 324.031. A taxicab shall maintain security as required under s. 324.032(1).

5. A personal delivery device as defined in s. 316.003.

Section 13. Subsection (2) of section 335.074, Florida Statutes, is amended to read:

335.074 Safety inspection of bridges.—

(2) At regular intervals as required by the Federal Highway Administration ~~not to exceed 2 years~~, each bridge on a public transportation facility shall be inspected for structural soundness and safety for the passage of traffic on such bridge. The thoroughness with which bridges are to be inspected shall depend on such factors as age, traffic characteristics, state of maintenance, and known deficiencies. The governmental entity having maintenance responsibility for any such bridge shall be responsible for having inspections performed and reports prepared in accordance with the provisions contained herein.

Section 14. Effective October 1, 2017, section 335.094, Florida Statutes, is created to read:

335.094 Highway memorial markers; public safety awareness.—

(1) In recognition of the department's mission to provide a safe transportation system, the Legislature intends that the department allow the use of highway memorial markers at or near the location of traffic-related fatalities on the State Highway System to raise public awareness and remind motorists to drive

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safely by memorializing people who have died as a result of a traffic-related crash.

(2) The department shall establish a process, including any forms deemed necessary by the department, for submitting applications for installation of a memorial marker as authorized in this section. Applications may be submitted to the department by:

(a) A member of the decedent's family, which includes the decedent's spouse; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent; or

(b) Any individual who is responsible under the laws of this state for the disposition of the unclaimed remains of the decedent or for other matters relating to the interment or memorialization of the decedent.

(3) The department shall establish criteria for the design and fabrication of memorial markers, including, but not limited to, marker components, fabrication material, and size.

(4)(a) The department may install a round aluminum sign panel with white background and black letters uniformly inscribed "Drive Safely, In Memory Of" followed by the decedent's name at no charge to the applicant.

(b) Upon the request of the applicant and payment of a reasonable fee set by the department to offset production costs, memorial markers may incorporate the available emblems of belief approved by the United States Department of Veterans Affairs National Cemetery Administration. For purposes of this section, an "emblem of belief" means an emblem that represents the decedent's religious affiliation or sincerely held religious


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belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent. The religion or belief system represented by an emblem need not be associated with or endorsed by a church, group, or organized denomination. The term does not include emblems, graphics, logos, or symbols that relate to social, cultural, ethnic, civic, fraternal, trade, commercial, political, professional, or military status.

(c) An applicant may request a new emblem of belief not specifically approved by the United States Department of Veterans Affairs National Cemetery Administration for inscription on a memorial marker as follows:

1. The applicant must certify that the proposed new emblem of belief represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent.

2. In the absence of evidence to the contrary, the department shall accept as genuine an applicant's statement of the religious or functionally equivalent belief system of a decedent.

(d) If the department determines that any application under this section is incomplete, the department must notify the applicant in writing of any missing information and must notify the applicant in writing that no further action on the application will be taken until the missing information is provided.

(5) The department shall place a memorial marker for any approved application at or near the location of the fatality in

a fashion that reduces driver distraction and positions the marker as near the right-of-way line as possible.

(6) Memorial markers are intended to remind passing motorists of the dangers of unsafe driving and are not intended for visitation. The department shall remove a memorial marker if the department determines the presence of the marker creates a safety hazard. In such cases, the department shall post a notice near where the marker was located indicating that the marker has been removed and provide contact information for pickup of the marker. The department shall store any removed markers for at least 60 days. If after 60 days the memorial is not claimed, the department may dispose of the marker as it deems necessary.

Section 15. Paragraph (c) of subsection (6) of section 337.11, Florida Statutes, is amended to read:

337.11 Contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.—

(6)

(c) When the department determines that it is in the best interest of the public for reasons of public concern, economy, improved operations, or safety, and only for contracts for construction and maintenance which do not exceed $250,000 when circumstances dictate rapid completion of the work, the department may~~, up to the amount of $120,000,~~ enter into contracts ~~for construction and maintenance~~ without advertising and receiving competitive bids. The department may enter into such contracts only upon a determination that the work is necessary for one of the following reasons:

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1. To ensure timely completion of projects or avoidance of undue delay for other projects;

2. To accomplish minor repairs or construction and maintenance activities for which time is of the essence and for which significant cost savings would occur; or

3. To accomplish nonemergency work necessary to ensure avoidance of adverse conditions that affect the safe and efficient flow of traffic.

The department shall make a good faith effort to obtain two or more quotes, if available, from qualified contractors before entering into any contract. The department shall give consideration to disadvantaged business enterprise participation. However, when the work exists within the limits of an existing contract, the department shall make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract.

Section 16. Subsection (5) is added to section 338.227, Florida Statutes, to read:

338.227 Turnpike revenue bonds.—

(5) Notwithstanding s. 215.82, bonds issued pursuant to this section are not required to be validated pursuant to chapter 75 but may be validated at the option of the Division of Bond Finance. Any complaint about such validation must be filed in the circuit court of the county in which the seat of state government is situated, and the clerk shall publish the notice as required by s. 75.06 only in the county in which the complaint is filed. The complaint and order of the circuit court must be served on the state attorney of the circuit in which the

action is pending.

Section 17. Paragraph (e) of subsection (7) of section 339.135, Florida Statutes, is amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

(e) Notwithstanding paragraphs (d), ~~and~~ (g), and (h) and ss. 216.177(2) and 216.351, the secretary may request the Executive Office of the Governor to amend the adopted work program when an emergency exists, as defined in s. 252.34, and the emergency relates to the repair or rehabilitation of any state transportation facility. The Executive Office of the Governor may approve the amendment to the adopted work program and amend that portion of the department's approved budget if a delay incident to the notification requirements in paragraph (d) would be detrimental to the interests of the state. However, the department shall immediately notify the parties specified in paragraph (d) and provide such parties written justification for the emergency action within 7 days after approval by the Executive Office of the Governor of the amendment to the adopted work program and the department's budget. The adopted work program may not be amended under this subsection without certification by the comptroller of the department that there are sufficient funds available pursuant to the 36-month cash forecast and applicable statutes.

Section 18. Section 339.2405, Florida Statutes, is amended to read:

339.2405 Florida Highway Beautification Grant Program ~~Council~~.—

(1) There is created within the Department of Transportation the Florida Highway Beautification Grant Program for the purpose of awarding grants to local governmental entities for beautification of roads on the State Highway System as provided in subsections (3) and (4). The department shall ~~Council. It shall consist of seven members appointed by the Governor. All appointed members must be residents of this state. One member must be a licensed landscape architect, one member must be a representative of the Florida Federation of Garden Clubs, Inc., one member must be a representative of the Florida Nurserymen and Growers Association, one member must be a representative of the department as designated by the head of the department, one member must be a representative of the Department of Agriculture and Consumer Services, and two members must be private citizens. The members of the council shall serve at the pleasure of the Governor.~~

~~(2) Each chair shall be selected by the council members and shall serve a 2-year term.~~

~~(3) The council shall meet no less than semiannually at the call of the chair or, in the chair's absence or incapacity, at the call of the head of the department. Four members shall constitute a quorum for the purpose of exercising all of the powers of the council. A vote of the majority of the members present shall be sufficient for all actions of the council.~~

~~(4) The council members shall serve without pay but shall be entitled to per diem and travel expenses pursuant to s. 112.061.~~

~~(5) A member of the council may not participate in any discussion or decision to recommend grants to any qualified~~


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~~local government with which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement.~~

~~(6) The council may prescribe, amend, and repeal bylaws governing the manner in which the business of the council is conducted.~~

~~(7)~~(a) ~~The duties of the council shall be to~~:

(a)~~1.~~ Provide information to local governments and local highway beautification councils regarding the state highway beautification grants program.

(b)~~2.~~ Accept grant requests from local governments.

(c)~~3.~~ Review grant requests for compliance with department ~~council~~ rules.

(d)~~4.~~ Establish rules for evaluating and prioritizing the grant requests. The rules must include, but are not limited to, an examination of each grant's aesthetic value, cost-effectiveness, level of local support, feasibility of installation and maintenance, and compliance with state and federal regulations. Rules adopted by the department ~~council~~ which it uses to evaluate grant applications must take into consideration the contributions made by the highway beautification project in preventing litter.

(e)~~5.~~ Maintain a prioritized list of approved grant requests. The list must include recommended funding levels for each request and, if staged implementation is appropriate, funding requirements for each stage shall be provided.

~~6. Assess the feasibility of planting and maintaining indigenous wildflowers and plants, instead of sod groundcovers, along the rights-of-way of state roads and highways. In making~~

~~such assessment, the council shall utilize data from other states which include indigenous wildflower and plant species in their highway vegetative management systems.~~

~~(b) The council may, at the request of the head of the department, review and make recommendations on any other highway beautification matters relating to the State Highway System.~~

~~(8) The head of the department shall provide from existing personnel such staff support services to the council as are necessary to enable the council to fulfill its duties and responsibilities.~~

(2) ~~(9)~~ Local highway beautification councils may be created by local governmental entities or by the Legislature. Prior to being submitted to the department ~~council~~, a grant request must be approved by the local government or governments of the area in which the project is located.

(3) ~~(10)~~ The head of the department~~, after receiving recommendations from the council,~~ shall award grants to local governmental entities that have submitted grant requests for beautification of roads on the State Highway System and which requests are on the ~~council's~~ approved list. The grants shall be awarded in the order they appear on the ~~council's~~ prioritized list and in accordance with available funding.

(4) ~~(11)~~ State highway beautification grants may be requested only for projects to beautify through landscaping roads on the State Highway System. The grant request shall identify all costs associated with the project, including sprinkler systems, plant materials, equipment, and labor. A grant shall provide for the costs of purchase and installation of a sprinkler system, the cost of plant materials and

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fertilizer, and may provide for the costs for labor associated with the installation of the plantings. Each local government that receives a grant is ~~shall be~~ responsible for any costs for water, for the maintenance of the sprinkler system, for the maintenance of the landscaped areas in accordance with a maintenance agreement with the department, and, except as otherwise provided in the grant, for any costs for labor associated with the installation of the plantings. The department may provide, by contract, services to maintain such landscaping at a level not to exceed the cost of routine maintenance of an equivalent unlandscaped area.

~~(12) The council shall annually submit to the head of the Department of Transportation a proposal recommending the level of grant funding.~~

Section 19. Section 343.52, Florida Statutes, is reordered and amended to read:

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

(2)~~(1)~~ "Authority" means the South Florida Regional Transportation Authority.

(3)~~(2)~~ "Board" means the governing body of the authority.

(4) "Department" means the Department of Transportation.

(1)~~(3)~~ "Area served" means Miami-Dade, Broward, and Palm Beach Counties. However, this area may be expanded by mutual consent of the authority and the board of county commissioners of Monroe County. The authority may not expand into any additional counties without the department's prior written approval.

(8)~~(4)~~ "Transit system" means a system used for the transportation of people and goods by means of, without

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limitation, a street railway, an elevated railway having a fixed guideway, a commuter railroad, a subway, motor vehicles, or motor buses, and includes a complete system of tracks, stations, and rolling stock necessary to effectuate passenger service to or from the surrounding regional municipalities.

(7) ~~(5)~~ "Transit facilities" means property, avenues of access, equipment, or buildings built and installed in Miami-Dade, Broward, and Palm Beach Counties which are required to support a transit system.

(6) "Member" means the individuals constituting the board.

(5) ~~(7)~~ "Feeder transit services" means a transit system that transports passengers to or from stations within or across counties.

Section 20. Present subsections (4) and (5) of section 343.54, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

343.54 Powers and duties.—

(4) Notwithstanding any other provision of this part, the authority may not enter into, extend, or renew any contract or other agreement under this part without the department's prior review and written approval of the authority's proposed expenditures if such contract or agreement may be funded, in whole or in part, with funds provided by the department.

Section 21. Paragraph (c) of subsection (4) of section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.—

(4) Notwithstanding any other provision of law to the


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contrary and effective July 1, 2010, until as provided in paragraph (d), the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2.

(c)1. Funds provided to the authority by the department under this subsection constitute state financial assistance provided to a nonstate entity to carry out a state project subject to the provisions of ss. 215.97 and 215.971. The department shall provide the funds in accordance with the terms of a written agreement to be entered into between the authority and the department which shall provide for department review, approval and audit of authority expenditure of such funds, and shall include such other provisions as are required by applicable law. The department is specifically authorized to agree to advance the authority one-fourth of the total funding provided under this subsection for a state fiscal year at the beginning of each state fiscal year, with monthly payments over the fiscal year on a reimbursement basis as supported by invoices and such additional documentation and information as the department may reasonably require, and a reconciliation of the advance against remaining invoices in the last quarter of the fiscal year ~~may not be committed by the authority without the approval of the department, which may not be unreasonably withheld. At least 90 days before advertising any procurement or renewing any existing contract that will rely on state funds for payment, the authority shall notify the department of the proposed procurement or renewal and the proposed terms thereof. If the department, within 60 days after receipt of notice,~~


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~~objects in writing to the proposed procurement or renewal, specifying its reasons for objection, the authority may not proceed with the proposed procurement or renewal. Failure of the department to object in writing within 60 days after notice shall be deemed consent. This requirement does not impair or cause the authority to cancel contracts that exist as of June 30, 2012~~.

2. To enable the department to evaluate the authority's proposed uses of state funds, the authority shall annually provide the department with its proposed budget for the following authority fiscal year and shall promptly provide the department with any additional documentation or information required by the department for its evaluation of the proposed uses of the state funds.

Section 22. Subsection (2) of section 215.82, Florida Statutes, is amended to read:

215.82 Validation; when required.—

(2) Any bonds issued pursuant to this act which are validated shall be validated in the manner provided by chapter 75. In actions to validate bonds to be issued in the name of the State Board of Education under s. 9(a) and (d), Art. XII of the State Constitution and bonds to be issued pursuant to chapter 259, the Land Conservation Program, the complaint shall be filed in the circuit court of the county where the seat of state government is situated, the notice required to be published by s. 75.06 shall be published only in the county where the complaint is filed, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending. In any action to validate bonds

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issued pursuant to s. 1010.62 or issued pursuant to s. 9(a)(1), Art. XII of the State Constitution or issued pursuant to s. 215.605 ~~or s. 338.227~~, the complaint shall be filed in the circuit court of the county where the seat of state government is situated, the notice required to be published by s. 75.06 shall be published in a newspaper of general circulation in the county where the complaint is filed and in two other newspapers of general circulation in the state, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending; provided, however, that if publication of notice pursuant to this section would require publication in more newspapers than would publication pursuant to s. 75.06, such publication shall be made pursuant to s. 75.06.

Section 23. Paragraph (d) of subsection (2) of section 343.53, Florida Statutes, is amended to read:

343.53 South Florida Regional Transportation Authority.—

(2) The governing board of the authority shall consist of 10 voting members, as follows:

(d) If the authority's service area is expanded pursuant to s. 343.54(6) ~~s. 343.54(5)~~, the county containing the new service area shall have two members appointed to the board as follows:

1. The county commission of the county shall elect a commissioner as that commission's representative on the board. The commissioner must be a member of the county commission when elected and for the full extent of his or her term.

2. The Governor shall appoint a citizen member to the board who is not a member of the county commission but who is a resident and a qualified elector of that county.


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Section 24. Section 427.011, Florida Statutes, is reordered and amended to read:

427.011 Definitions.—For the purposes of ss. 427.011-427.017:

(9)~~(1)~~ "Transportation disadvantaged" means those persons who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk as defined in s. 411.202.

(5)~~(2)~~ "Metropolitan planning organization" means the organization responsible for carrying out transportation planning and programming in accordance with the provisions of 23 U.S.C. s. 134, as provided in 23 U.S.C. s. 104(f)(3).

(1)~~(3)~~ "Agency" means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or any other unit or entity of the state or of a city, town, municipality, county, or other local governing body or a private nonprofit transportation service-providing agency.

(11)~~(4)~~ "Transportation improvement program" means a staged multiyear program of transportation improvements, including an annual element, which is developed by a metropolitan planning organization or designated official planning agency.

(2)~~(5)~~ "Community transportation coordinator" means a transportation entity recommended by a metropolitan planning organization, or by the appropriate designated official planning agency as provided for in ss. 427.011-427.017 in an area outside

the purview of a metropolitan planning organization, to ensure that coordinated transportation services are provided to the transportation disadvantaged population in a designated service area.

(12) ~~(6)~~ "Transportation operator" means one or more public, private for-profit, or private nonprofit entities engaged by the community transportation coordinator to provide service to transportation disadvantaged persons pursuant to a coordinated system service plan.

(3) ~~(7)~~ "Coordinating board" means an advisory entity in each designated service area composed of representatives appointed by the metropolitan planning organization or designated official planning agency, to provide assistance to the community transportation coordinator relative to the coordination of transportation services.

(8) "Purchasing agency" means a department or agency whose head is an ex officio, nonvoting adviser to the commission, or an agency that purchases transportation services for the transportation disadvantaged.

(7) ~~(9)~~ "Paratransit" means those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, "dial-a-ride," buses, transportation network companies, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature.

(10) "Transportation disadvantaged funds" means any local government, state, or available federal funds that are for the

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transportation of the transportation disadvantaged. Such funds may include, but are not limited to, funds for planning, Medicaid transportation, administration, operation, procurement, and maintenance of vehicles or equipment and capital investments. Transportation disadvantaged funds do not include funds for the transportation of children to public schools.

(4) ~~(11)~~ "Coordination" means the arrangement for the provision of transportation services to the transportation disadvantaged in a manner that is cost-effective, efficient, and reduces fragmentation and duplication of services.

(6) ~~(12)~~ "Nonsponsored transportation disadvantaged services" means transportation disadvantaged services that are not sponsored or subsidized by any funding source other than the Transportation Disadvantaged Trust Fund.

Section 25. Subsection (1) of section 316.2128, Florida Statutes, is amended to read:

316.2128 Operation of motorized scooters and miniature motorcycles; requirements for sales.—

(1) A person who engages in the business of, serves in the capacity of, or acts as a commercial seller of motorized scooters or miniature motorcycles in this state must prominently display at his or her place of business a notice that such vehicles are not legal to operate on public roads, may not be registered as motor vehicles, and may not be operated on sidewalks unless authorized by an ordinance enacted pursuant to s. 316.008(7)(a) ~~316.008(7)~~ or s. 316.212(8). The required notice must also appear in all forms of advertising offering motorized scooters or miniature motorcycles for sale. The notice and a copy of this section must also be provided to a consumer

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prior to the consumer's purchasing or becoming obligated to purchase a motorized scooter or a miniature motorcycle.

Section 26. Paragraph (a) of subsection (2) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(2) As used in this section, the term "motor vehicle" means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:

(a) A school bus as defined in s. 316.003 ~~316.003(68)~~.

Section 27. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(79)(a) or (b) ~~316.003(77)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

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

And the title is amended as follows:

Delete lines 2 - 130

and insert:

An act relating to transportation; amending s. 316.003, F.S.; revising and providing definitions; amending s. 316.008, F.S.; authorizing operation of personal delivery devices within a county or

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municipality under certain circumstances; providing construction; providing exceptions; creating s. 316.0898, F.S.; requiring the Department of Transportation, in consultation with the Department of Highway Safety and Motor Vehicles, to develop the Florida Smart City Challenge grant program; specifying requirements for grant program applicants; establishing goals for the grant program; requiring the Department of Transportation to develop specified criteria for the program grants and a plan for promotion of the grant program; authorizing the Department of Transportation to contract with a third party that demonstrates certain knowledge and expertise for a specified purpose; requiring the Department of Transportation to submit certain information regarding the grant program to the Governor and the Legislature by a specified date; providing for repeal; creating s. 316.2071, F.S.; providing requirements for the operation of personal delivery devices; requiring specified insurance coverage; amending s. 316.545, F.S.; conforming a cross-reference; providing for the calculation of fines for unlawful weight and load for a vehicle fueled by natural gas; requiring the vehicle operator to present a certain written certification upon request by a weight inspector or law enforcement officer; prescribing a maximum actual gross vehicle weight for vehicles fueled by natural gas; providing applicability; creating s. 316.851, F.S.; requiring an

autonomous vehicle used by a transportation network company to be covered by automobile insurance, subject to certain requirements; requiring an autonomous vehicle used to provide a transportation service to carry in the vehicle proof of coverage satisfying certain requirements at all times while operating in autonomous mode; creating s. 316.853, F.S.; defining the term "automated mobility district"; requiring the Department of Transportation to designate automated mobility districts; requiring the department to consider applicable criteria from federal agencies for automated mobility districts in determining eligibility of a community for the designation; amending s. 319.145, F.S.; requiring an autonomous vehicle registered in this state to be capable of bringing the vehicle to a full stop when an alert is given if the human operator does not, or is not able to, take control of the autonomous vehicle, or if a human operator is not physically present in the vehicle; amending s. 320.01, F.S.; excluding personal delivery devices from the definition of the term "motor vehicle"; amending s. 320.02, F.S.; exempting a personal delivery device from certain registration and insurance requirements; amending ss. 324.021 and 324.022, F.S.; excluding personal delivery devices from the definition of the term "motor vehicle"; amending s. 335.074, F.S.; requiring bridges on public transportation facilities to be inspected for certain purposes at regular intervals as required by the


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Federal Highway Administration; creating s. 335.094, F.S.; providing legislative intent; requiring the department to establish a process, including any forms deemed necessary by the department, for submitting applications for installation of a memorial marker; specifying persons who may submit such applications to the department; requiring the department to establish criteria for the design and fabrication of memorial markers; authorizing the department to install a certain sign at no charge to an applicant; providing that memorial markers may incorporate the available emblems of belief approved by the United States Department of Veterans Affairs National Cemetery Administration upon the request of the applicant and payment of a reasonable fee set by the department to offset production costs; defining the term "emblem of belief"; authorizing an applicant to request a new emblem of belief not specifically approved by the United States Department of Veterans Affairs National Cemetery Administration for inscription on a memorial marker, subject to certain requirements; requiring the department, under certain circumstances, to notify an applicant of any missing information and that no further action on the application will be taken until the missing information is provided; providing requirements for placement of the memorial marker by the department; requiring the department to remove a memorial marker if the department determines the presence of the marker creates a safety hazard,

463056

subject to certain requirements; amending s. 337.11, F.S.; increasing the allowable amount for contracts for construction and maintenance which the department may enter into, in certain circumstances, without advertising and receiving competitive bids; amending s. 338.227, F.S.; providing that certain bonds are not required to be validated but may be validated at the option of the Division of Bond Finance; providing filing, notice, and service requirements for complaints and circuit court orders concerning such validation; amending s. 339.135, F.S.; providing an additional exception related to the amendment of adopted work programs when an emergency exists; amending s. 339.2405, F.S.; replacing the Florida Highway Beautification Council within the department with the Florida Highway Beautification Grant Program; providing the purpose of the program; providing duties of the department; conforming provisions to changes made by the act; amending s. 343.52, F.S.; defining the term "department"; amending s. 343.54, F.S.; prohibiting the South Florida Regional Transportation Authority from entering into, extending, or renewing certain contracts or other agreements without the department's prior review and written approval if such contracts or agreements may be funded with funds provided by the department; amending s. 343.58, F.S.; providing that certain funds provided to the authority by the department constitute state financial assistance for specified purposes, subject to certain


463056

requirements; requiring the department to provide certain funds in accordance with the terms of an agreement between the authority and the department; authorizing the department to advance the authority a certain amount of the total funding for a state fiscal year at the beginning of each state fiscal year, subject to certain requirements; requiring the authority to promptly provide the department any documentation or information, in addition to the proposed annual budget, which is required by the department for its evaluation of the proposed uses of state funds; amending s. 215.82, F.S.; conforming a provision to changes made by the act; amending s. 343.53, F.S.; conforming a cross-reference; amending s. 427.011, F.S.; revising the definition of the term "paratransit"; authorizing the Secretary of Transportation to enroll the State of Florida in federal pilot programs or projects for the collection and study of data for the review of federal or state roadway safety, infrastructure sustainability, congestion mitigation, transportation system efficiency, autonomous vehicle technology, or capacity challenges; amending ss. 316.2128, 316.613, and 655.960, F.S.; conforming cross-references; providing effective dates, one of which is

536292

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/28/2017	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment to Amendment (463056) (with title amendment)

Between lines 296 and 297
insert:

Section 11. Section 320.0605, Florida Statutes, is amended to read:

320.0605 Certificate of registration; possession required; exception.—

(1)(a) The registration certificate or an official copy

536292

thereof, a true copy or electronic copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period, a temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet, or a cab card issued for a vehicle registered under the International Registration Plan shall, at all times while the vehicle is being used or operated on the roads of this state, be in the possession of the operator thereof or be carried in the vehicle for which issued and shall be exhibited upon demand of any authorized law enforcement officer or any agent of the department, except for a vehicle registered under s. 320.0657. ~~The provisions of~~ This section does ~~do~~ not apply during the first 30 days after purchase of a replacement vehicle. A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b)1. The act of presenting to a law enforcement officer or an agent of the department an electronic device displaying an electronic copy of rental or lease documentation does not constitute consent for the officer or agent to access any information on the device other than the displayed rental or lease documentation.

2. The person who presents the device to the officer or agent assumes the liability for any resulting damage to the device.

(2) Rental or lease documentation that is sufficient to satisfy the requirement in subsection (1) includes the following:

(a) Date ~~of rental~~ and time of ~~exit from~~ rental ~~facility~~;

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(b) Rental station identification;
(c) Rental agreement number;
(d) Rental vehicle identification number;
(e) Rental vehicle license plate number and state of registration;
(f) Vehicle’s make, model, and color;
(g) Vehicle’s mileage; and
(h) Authorized renter’s name.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 904
and insert:
insurance requirements; amending s. 320.0605, F.S.; providing that an electronic copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period may be in the possession of the operator or be carried in the vehicle, to be exhibited upon demand of any authorized law enforcement officer or any agent of the Department of Highway Safety and Motor Vehicles; providing that the act of presenting to a law enforcement officer or an agent of the department an electronic device displaying an electronic copy of rental or lease documentation does not constitute consent for the officer or agent to access any information on the device other than the displayed rental or lease documentation; providing that the person who presents the device to the officer or agent

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assumes the liability for any resulting damage to the device; revising information in rental or lease documentation that is sufficient to satisfy a certain requirement; amending ss. 324.021 and

870828

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Between lines 389 and 390
insert:

Section 9. Paragraph (a) of subsection (1) of section 337.401, Florida Statutes, is amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(1)(a) The department and local governmental entities, referred to in this section and in ss. 337.402, 337.403, and

870828

337.404 as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, voice ~~telephone~~, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the "utility." The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation; however, the permit-delegation agreement does not apply to facilities of electric utilities as defined in s. 366.02(2).

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

And the title is amended as follows:

Delete line 83

and insert:

receiving competitive bids; amending s. 337.401, F.S.; authorizing the Department of Transportation and certain local governmental entities to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned

870828

rail corridors under their respective jurisdictions any voice or data communications services lines or wireless facilities; amending s. 338.227, F.S.;

404224

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2017	.	
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The Committee on Appropriations (Gainer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 402 - 403
and insert:
Section 10. Subsection (4) is added to section 338.2275, Florida Statutes, to read:
338.2275 Approved turnpike projects.—
(1) Legislative approval of the department’s tentative work program that contains the turnpike project constitutes approval to issue bonds as required by s. 11(f), Art. VII of the State

404224

Constitution. No more than $10 billion of bonds may be outstanding to fund approved turnpike projects.

(2) The department may use turnpike revenues, the State Transportation Trust Fund moneys allocated for turnpike projects pursuant to s. 339.65, federal funds, and bond proceeds, and shall use the most cost-efficient combination of such funds, in developing a financial plan for funding turnpike projects. The department must submit a report of the estimated cost for each ongoing turnpike project and for each planned project to the Legislature 14 days before the convening of the regular legislative session. Verification of economic feasibility and statements of environmental feasibility for individual turnpike projects must be based on the entire project as approved. Statements of environmental feasibility are not required for those projects listed in s. 12, chapter 90-136, Laws of Florida, for which the Project Development and Environmental Reports were completed by July 1, 1990. All required environmental permits must be obtained before the department may advertise for bids for contracts for the construction of any turnpike project.

(3) Bonds may not be issued to fund a turnpike project until the department has made a final determination that the project is economically feasible in accordance with s. 338.221, based on the most current information available.

(4)(a) Subject to the verification of economic feasibility by the department in accordance with s. 338.221(8), the department may include the acquisition of the Garcon Point Bridge, and related assets, as a turnpike project in its tentative work program in accordance with s. 338.223. Upon approval of the acquisition through approval of the department's

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tentative work program in accordance with s. 339.135, the department may acquire the Garcon Point Bridge, including related assets, and as part of such acquisition may purchase outstanding Santa Rosa Bay Bridge Authority bonds. The department has the authority to enter into any agreements necessary to implement the acquisition, including the purchase of Santa Rosa Bay Bridge Authority bonds, and to specify the terms and conditions thereof. Upon acquisition, the Garcon Point Bridge shall become a part of the turnpike system. Pursuant to section 11(f), Art. VII of the State Constitution, the issuance of revenue bonds to finance the department's acquisition of the Garcon Point Bridge is approved.

(b) The acquisition price paid by the department shall first be used to settle all claims of bondholders of the Santa Rosa Bay Bridge Authority Revenue Bonds, Series 1996.

(c) No toll rate increase may be imposed on the Garcon Point Bridge by the authority, the department, or the trustee for bondholders, in connection with the acquisition of the bridge by the department. Following any acquisition by the department, no increase in tolls for use of the bridge shall be permitted except as required by law or as required to comply with the covenants contained in any resolution under which bonds have been issued.

(d) Neither the department nor the state shall incur any financial obligation for the acquisition of the Garcon Point Bridge in excess of forecasted gross revenues from the operation of the bridge. Therefore, the total acquisition price paid by the department may not exceed the present value of the gross revenues (calculated without any increase in the existing toll

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rate) anticipated to be collected from the operation of the bridge between the date of a purchase agreement in accordance with this section and the end of the anticipated remaining useful life of the bridge as it exists as of the date of the purchase agreement.

(e) Upon the acquisition of the Garcon Point Bridge as authorized by this subsection, the October 23, 1996, Lease Purchase Agreement between the authority and the department, as amended, shall be terminated.

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

And the title is amended as follows:

Delete line 88

and insert:

court orders concerning such validation; amending s. 338.2275, F.S.; authorizing the department to include the acquisition of the Garcon Point Bridge and related assets as a turnpike project in the department's tentative work program, subject to certain requirements; authorizing the department to acquire the bridge and outstanding Santa Rosa Bay Bridge Authority bonds upon approval of the acquisition through approval of the department's tentative work program; authorizing the department to enter into necessary agreements to implement the acquisition and to specify the terms and conditions thereof; providing that the bridge becomes a part of the turnpike system upon its acquisition; approving the issuance of revenue bonds; requiring the acquisition price paid by

404224

the department to first be used to settle all claims of the holders of certain Santa Rosa Bay Bridge Authority Revenue Bonds; prohibiting a toll rate increase in connection with the acquisition of the bridge; prohibiting any increase in tolls for use of the bridge following its acquisition, except as required by law or to comply with bond covenants; prohibiting the department or the state from incurring any financial obligation for the acquisition in excess of certain gross revenues; providing that the acquisition price paid by the department may not exceed the present value of certain gross revenues; terminating a certain lease-purchase agreement between the Santa Rosa Bay Bridge Authority and the department upon the acquisition of the Garcon Point Bridge; repealing part IV of chapter 348, F.S., relating to the Santa Rosa Bay Bridge Authority, upon acquisition of the bridge; amending s.

268346

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2017	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 734 and 735
insert:

Section 18. Section 501.977, Florida Statutes, is created to read:

501.977 Installation of unsafe tires.—

(1) A person in this state may not, for compensation, install tires on a motor vehicle with a gross vehicle weight rating of 10,000 pounds or less for use on public streets,

roads, or highways if any of the following conditions exist:

(a) Any area of the tire's tread is worn to 2/32-inch tread depth or less.

(b) Damage to the tire, including any cut, crack, bulge, puncture, scrape, or wear, that exposes the reinforcing plies of the tire.

(c) The tire has been repaired in one or more of the following manners:

1. A repair made in the tread shoulder or belt edge area of the tire.

2. A puncture repair using a cured rubber stem or plug through to the outside of the tire instead of the puncture being patched or sealed on the inside of the tire.

3. A repair to the sidewall or bead area of the tire.

4. A repair of a puncture larger than one-fourth of an inch.

(d) The tire shows evidence of a temporary tire sealant having been used without a subsequent proper repair.

(e) The tire identification number has been defaced or removed.

(f) The tire has inner liner or bead damage.

(g) The tire shows evidence of internal separation, such as a bulge or an area of irregular tread wear.

(2) A person who knowingly violates this section commits a deceptive and unfair trade practice actionable under the Florida Deceptive and Unfair Trade Practices Act pursuant to part II of this chapter.

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

268346

And the title is amended as follows:

Delete line 123

and insert:

"paratransit"; creating s. 501.977, F.S.; prohibiting the installation, for compensation, of certain tires on specified motor vehicles; specifying what constitutes an unsafe used tire; providing that violations of the act are deceptive and unfair trade practices; authorizing the Secretary of

788242

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Appropriations (Gainer) recommended the following:

Senate Amendment (with title amendment)

Between lines 740 and 741
insert:

Section 18. Subsection (4) is added to section 338.2275, Florida Statutes, to read:

338.2275 Approved turnpike projects.—

(1) Legislative approval of the department’s tentative work program that contains the turnpike project constitutes approval to issue bonds as required by s. 11(f), Art. VII of the State

Constitution. No more than $10 billion of bonds may be outstanding to fund approved turnpike projects.

(2) The department may use turnpike revenues, the State Transportation Trust Fund moneys allocated for turnpike projects pursuant to s. 339.65, federal funds, and bond proceeds, and shall use the most cost-efficient combination of such funds, in developing a financial plan for funding turnpike projects. The department must submit a report of the estimated cost for each ongoing turnpike project and for each planned project to the Legislature 14 days before the convening of the regular legislative session. Verification of economic feasibility and statements of environmental feasibility for individual turnpike projects must be based on the entire project as approved. Statements of environmental feasibility are not required for those projects listed in s. 12, chapter 90-136, Laws of Florida, for which the Project Development and Environmental Reports were completed by July 1, 1990. All required environmental permits must be obtained before the department may advertise for bids for contracts for the construction of any turnpike project.

(3) Bonds may not be issued to fund a turnpike project until the department has made a final determination that the project is economically feasible in accordance with s. 338.221, based on the most current information available.

(4)(a) Subject to the verification of economic feasibility by the department in accordance with s. 338.221(8), the department may include the acquisition of the Garcon Point Bridge, and related assets, as a turnpike project in its tentative work program in accordance with s. 338.223. Upon approval of the acquisition through approval of the department's


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tentative work program in accordance with s. 339.135, the department may acquire the Garcon Point Bridge, including related assets, and as part of such acquisition may purchase outstanding Santa Rosa Bay Bridge Authority bonds. The department has the authority to enter into any agreements necessary to implement the acquisition, including the purchase of Santa Rosa Bay Bridge Authority bonds, and to specify the terms and conditions thereof. Upon acquisition, the Garcon Point Bridge shall become a part of the turnpike system. Pursuant to section 11(f), Art. VII of the State Constitution, the issuance of revenue bonds to finance the department's acquisition of the Garcon Point Bridge is approved.

(b) The acquisition price paid by the department shall first be used to settle all claims of bondholders of the Santa Rosa Bay Bridge Authority Revenue Bonds, Series 1996.

(c) No toll rate increase may be imposed on the Garcon Point Bridge by the authority, the department, or the trustee for bondholders, in connection with the acquisition of the bridge by the department. Following any acquisition by the department, no increase in tolls for use of the bridge shall be permitted except as required by law or as required to comply with the covenants contained in any resolution under which bonds have been issued.

(d) Neither the department nor the state shall incur any financial obligation for the acquisition of the Garcon Point Bridge in excess of forecasted gross revenues from the operation of the bridge. Therefore, the total acquisition price paid by the department may not exceed the present value of the gross revenues (calculated without any increase in the existing toll

788242

rate) anticipated to be collected from the operation of the bridge between the date of a purchase agreement in accordance with this section and the end of the anticipated remaining useful life of the bridge as it exists as of the date of the purchase agreement.

(e) Upon the acquisition of the Garcon Point Bridge as authorized by this subsection, the October 23, 1996, Lease Purchase Agreement between the authority and the department, as amended, shall be terminated.

Section 19. Upon acquisition of the Garcon Point Bridge as authorized by subsection (4) of s. 338.2275,part IV of chapter 348, consisting of ss. 348.965-348.9781, is repealed.

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

And the title is amended as follows:

Delete line 88

and insert:

court orders concerning such validation; amending s. 338.2275, F.S.; authorizing the department to include the acquisition of the Garcon Point Bridge and related assets as a turnpike project in the department's tentative work program, subject to certain requirements; authorizing the department to acquire the bridge and outstanding Santa Rosa Bay Bridge Authority bonds upon approval of the acquisition through approval of the department's tentative work program; authorizing the department to enter into necessary agreements to implement the acquisition and to specify the terms and conditions thereof; providing

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that the bridge becomes a part of the turnpike system upon its acquisition; approving the issuance of revenue bonds; requiring the acquisition price paid by the department to first be used to settle all claims of the holders of certain Santa Rosa Bay Bridge Authority Revenue Bonds; prohibiting a toll rate increase in connection with the acquisition of the bridge; prohibiting any increase in tolls for use of the bridge following its acquisition, except as required by law or to comply with bond covenants; prohibiting the department or the state from incurring any financial obligation for the acquisition in excess of certain gross revenues; providing that the acquisition price paid by the department may not exceed the present value of certain gross revenues; terminating a certain lease-purchase agreement between the Santa Rosa Bay Bridge Authority and the department upon the acquisition of the Garcon Point Bridge; repealing part IV of chapter 348, F.S., relating to the Santa Rosa Bay Bridge Authority, upon acquisition of the bridge; amending s.

754266

LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Braynon) recommended the following:

Senate Amendment (with title amendment)

Between lines 740 and 741
insert:

Section 19. Broward County has undergone significant expansion of its interstate system over the last 5 years. Broward County is the second most populous county in the state and is largely built out. The expansion of Broward County interstate highways occurred in fully developed areas in which relocation of permitted signs is difficult; the placement of new

754266

ramps, bridges, and other construction within the interstate right-of-way can hinder the ability of the public to view existing permitted signs; and allowing a minimal height increase based upon the height of the obstruction is reasonable.

Section 20. Notwithstanding general law to the contrary, in the event that a properly permitted sign on an interstate highway within Broward County is subsequently obstructed by the construction of a ramp, braided bridge, or other permanent visual obstruction within the interstate right-of-way, the allowable height of the permitted sign shall be measured from the top of the visual obstruction. However, the height of the sign may not exceed 100 feet above the crown of the main traveled way of the road to which the sign is permitted regardless of the height of the visual obstruction.

Section 21. The Department of Transportation is authorized to promulgate any rules or forms necessary to implement this act.

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

And the title is amended as follows:

Delete line 130

and insert:

challenges; providing legislative findings; providing for an alternate means to measure permitted sign height on interstate highways within Broward County; providing for the Department of Transportation to promulgate rules; providing effective dates, one of which is


304644

576-03797-17

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; creating s. 316.0898, F.S.; requiring the Department of Transportation, in consultation with the Department of Highway Safety and Motor Vehicles, to develop the Florida Smart City Challenge grant program; specifying requirements for grant program applicants; establishing goals for the grant program; requiring the Department of Transportation to develop specified criteria for the program grants and a plan for promotion of the grant program; authorizing the Department of Transportation to contract with a third party that demonstrates certain knowledge and expertise for a specified purpose; requiring the Department of Transportation to submit certain information regarding the grant program to the Governor and the Legislature by a specified date; providing for repeal; amending s. 316.545, F.S.; providing for the calculation of fines for unlawful weight and load for a vehicle fueled by natural gas; requiring the vehicle operator to present a certain written certification upon request by a weight inspector or law enforcement officer; prescribing a maximum actual gross vehicle weight for vehicles fueled by natural gas; providing applicability; creating s. 316.851, F.S.; requiring an autonomous


304644

576-03797-17

vehicle used by a transportation network company to be covered by automobile insurance, subject to certain requirements; requiring an autonomous vehicle used to provide a transportation service to carry in the vehicle proof of coverage satisfying certain requirements at all times while operating in autonomous mode; creating s. 316.853, F.S.; defining the term "automated mobility district"; requiring the Department of Transportation to designate automated mobility districts; requiring the department to consider applicable criteria from federal agencies for automated mobility districts in determining eligibility of a community for the designation; amending s. 319.145, F.S.; requiring an autonomous vehicle registered in this state to be capable of bringing the vehicle to a full stop when an alert is given if the human operator does not, or is not able to, take control of the autonomous vehicle, or if a human operator is not physically present in the vehicle; amending s. 335.074, F.S.; requiring bridges on public transportation facilities to be inspected for certain purposes at regular intervals as required by the Federal Highway Administration; creating s. 335.094, F.S.; providing legislative intent; requiring the department to establish a process, including any forms deemed necessary by the department, for submitting applications for installation of a memorial marker; specifying persons who may submit such applications to the department; requiring the

department to establish criteria for the design and fabrication of memorial markers; authorizing the department to install a certain sign at no charge to an applicant; providing that memorial markers may incorporate the available emblems of belief approved by the United States Department of Veterans Affairs National Cemetery Administration upon the request of the applicant and payment of a reasonable fee set by the department to offset production costs; defining the term "emblem of belief"; authorizing an applicant to request a new emblem of belief not specifically approved by the United States Department of Veterans Affairs National Cemetery Administration for inscription on a memorial marker, subject to certain requirements; requiring the department, under certain circumstances, to notify an applicant of any missing information and that no further action on the application will be taken until the missing information is provided; providing requirements for placement of the memorial marker by the department; requiring the department to remove a memorial marker if the department determines the presence of the marker creates a safety hazard, subject to certain requirements; amending s. 337.11, F.S.; increasing the allowable amount for contracts for construction and maintenance which the department may enter into, in certain circumstances, without advertising and receiving competitive bids; amending s. 338.227, F.S.; providing that certain bonds are not required to be

validated but may be validated at the option of the Division of Bond Finance; providing filing, notice, and service requirements for complaints and circuit court orders concerning such validation; amending s. 339.135, F.S.; providing an additional exception related to the amendment of adopted work programs when an emergency exists; amending s. 339.2405, F.S.; replacing the Florida Highway Beautification Council within the department with the Florida Highway Beautification Grant Program; providing the purpose of the program; providing duties of the department; conforming provisions to changes made by the act; amending s. 343.52, F.S.; defining the term "department"; amending s. 343.54, F.S.; prohibiting the South Florida Regional Transportation Authority from entering into, extending, or renewing certain contracts or other agreements without the department's prior review and written approval if such contracts or agreements may be funded with funds provided by the department; amending s. 343.58, F.S.; providing that certain funds provided to the authority by the department constitute state financial assistance for specified purposes, subject to certain requirements; requiring the department to provide certain funds in accordance with the terms of an agreement between the authority and the department; authorizing the department to advance the authority a certain amount of the total funding for a state fiscal year at the beginning of each state fiscal year, subject to

certain requirements; requiring the authority to promptly provide the department any documentation or information, in addition to the proposed annual budget, which is required by the department for its evaluation of the proposed uses of state funds; amending s. 215.82, F.S.; conforming a provision to changes made by the act; amending s. 343.53, F.S.; conforming a cross-reference; amending s. 427.011, F.S.; revising the definition of the term "paratransit"; authorizing the Secretary of Transportation to enroll the State of Florida in federal pilot programs or projects for the collection and study of data for the review of federal or state roadway safety, infrastructure sustainability, congestion mitigation, transportation system efficiency, autonomous vehicle technology, or capacity challenges; providing effective dates, one of which is contingent.

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

Section 1. Section 316.0898, Florida Statutes, is created to read:

316.0898 Florida Smart City Challenge grant program.—

(1) The Department of Transportation, in consultation with the Department of Highway Safety and Motor Vehicles, shall develop the Florida Smart City Challenge grant program and shall establish grant award requirements for municipalities or regions for the purpose of receiving grant awards. Grant applicants must

demonstrate and document the adoption of emerging technologies and their impact on the transportation system and must address at least the following focus areas:

(a) Autonomous vehicles.

(b) Connected vehicles.

(c) Sensor-based infrastructure.

(d) Collecting and using data.

(e) Electric vehicles, including charging stations.

(f) Developing strategic models and partnerships.

(2) The goals of the grant program include, but are not limited to:

(a) Identifying transportation challenges and identifying how emerging technologies can address those challenges.

(b) Determining the emerging technologies and strategies that have the potential to provide the most significant impacts.

(c) Encouraging municipalities to take significant steps to integrate emerging technologies into their day-to-day operations.

(d) Identifying the barriers to implementing the grant program and communicating those barriers to the Legislature and appropriate agencies and organizations.

(e) Leveraging the initial grant to attract additional public and private investments.

(f) Increasing the state's competitiveness in the pursuit of grants from the United States Department of Transportation, the United States Department of Energy, and other federal agencies.

(g) Committing to the continued operation of programs implemented in connection with the grant.

(h) Serving as a model for municipalities nationwide.

(i) Documenting the costs and impacts of the grant program and lessons learned during implementation.

(j) Identifying solutions that will demonstrate local or regional economic impact.

(3) The Department of Transportation shall develop eligibility, application, and selection criteria for the program grants and a plan for the promotion of the grant program to municipalities or regions of this state as an opportunity to compete for grant funding, including the award of grants to a single recipient and secondary grants to specific projects of merit within other applications. The Department of Transportation may contract with a third party that demonstrates knowledge and expertise in the focuses and goals of this section to provide guidance in the development of the requirements of this section.

(4) On or before January 1, 2018, the Department of Transportation shall submit the grant program guidelines and plans for promotion of the grant program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) This section expires July 1, 2018.

Section 2. Present paragraphs (c) and (d) of subsection (3) of section 316.545, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to that subsection, to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(3)

(c)1. For a vehicle fueled by natural gas, the fine is calculated by reducing the actual gross vehicle weight by the certified weight difference between the natural gas tank and fueling system and a comparable diesel tank and fueling system. Upon the request of a weight inspector or a law enforcement officer, the vehicle operator shall present a written certification that identifies the weight of the natural gas tank and fueling system and the difference in weight of a comparable diesel tank and fueling system. The written certification must originate from the vehicle manufacturer or the installer of the natural gas tank and fueling system.

2. The actual gross vehicle weight for vehicles fueled by natural gas may not exceed 82,000 pounds, excluding the weight allowed for idle-reduction technology under paragraph (b).

3. This paragraph does not apply to vehicles described in s. 316.535(6).

Section 3. Effective upon the same date that SB 340 or similar legislation takes effect, if such legislation is adopted in the 2017 Regular Session or any extension thereof and becomes a law, section 316.851, Florida Statutes, is created to read:

316.851 Autonomous vehicles; providing prearranged rides.—

(1) An autonomous vehicle used by a transportation network company to provide a prearranged ride must be covered by automobile insurance as required by s. 627.748, regardless of whether a human operator is physically present within the vehicle when the ride occurs. When an autonomous vehicle is logged on to a digital network but is not engaged in a prearranged ride, the autonomous vehicle must maintain insurance coverage as defined in s. 627.748(7)(b).

(2) An autonomous vehicle used to provide a transportation service shall carry in the vehicle proof of coverage satisfying the requirements of this section at all times while operating in autonomous mode.

Section 4. Section 316.853, Florida Statutes, is created to read:

316.853 Automated mobility districts.—

(1) For the purpose of this section, an "automated mobility district" means a master planned development or combination of contiguous developments in which the deployment of autonomous vehicles as defined in s. 316.003 as the basis for a shared mobility system is a stated goal or objective of the development or developments.

(2) The Department of Transportation shall designate automated mobility districts.

(3) In determining the eligibility of a community for designation as an automated mobility district, the Department of Transportation shall consider applicable criteria from federal agencies for automated mobility districts and apply those criteria to eligible developments in this state.

Section 5. Paragraph (a) of subsection (1) of section 319.145, Florida Statutes, is amended to read:

319.145 Autonomous vehicles.—

(1) An autonomous vehicle registered in this state must continue to meet applicable federal standards and regulations for such motor vehicle. The vehicle must:

(a) Have a system to safely alert the operator if an autonomous technology failure is detected while the autonomous technology is engaged. When an alert is given, the system must:

1. Require the operator to take control of the autonomous vehicle; or

2. If the human operator does not, or is not able to, take control of the autonomous vehicle, or if a human operator is not physically present in the vehicle, be capable of bringing the vehicle to a complete stop.

Section 6. Subsection (2) of section 335.074, Florida Statutes, is amended to read:

335.074 Safety inspection of bridges.—

(2) At regular intervals as required by the Federal Highway Administration ~~not to exceed 2 years~~, each bridge on a public transportation facility shall be inspected for structural soundness and safety for the passage of traffic on such bridge. The thoroughness with which bridges are to be inspected shall depend on such factors as age, traffic characteristics, state of maintenance, and known deficiencies. The governmental entity having maintenance responsibility for any such bridge shall be responsible for having inspections performed and reports prepared in accordance with the provisions contained herein.

Section 7. Effective October 1, 2017, section 335.094, Florida Statutes, is created to read:

335.094 Highway memorial markers; public safety awareness.—

(1) In recognition of the department's mission to provide a safe transportation system, the Legislature intends that the department allow the use of highway memorial markers at or near the location of traffic-related fatalities on the State Highway System to raise public awareness and remind motorists to drive safely by memorializing people who have died as a result of a traffic-related crash.

(2) The department shall establish a process, including any forms deemed necessary by the department, for submitting applications for installation of a memorial marker as authorized in this section. Applications may be submitted to the department by:

(a) A member of the decedent's family, which includes the decedent's spouse; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent; or

(b) Any individual who is responsible under the laws of this state for the disposition of the unclaimed remains of the decedent or for other matters relating to the interment or memorialization of the decedent.

(3) The department shall establish criteria for the design and fabrication of memorial markers, including, but not limited to, marker components, fabrication material, and size.

(4)(a) The department may install a round aluminum sign panel with white background and black letters uniformly inscribed "Drive Safely, In Memory Of" followed by the decedent's name at no charge to the applicant.

(b) Upon the request of the applicant and payment of a reasonable fee set by the department to offset production costs, memorial markers may incorporate the available emblems of belief approved by the United States Department of Veterans Affairs National Cemetery Administration. For purposes of this section, an "emblem of belief" means an emblem that represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life

of the decedent. The religion or belief system represented by an emblem need not be associated with or endorsed by a church, group, or organized denomination. The term does not include emblems, graphics, logos, or symbols that relate to social, cultural, ethnic, civic, fraternal, trade, commercial, political, professional, or military status.

(c) An applicant may request a new emblem of belief not specifically approved by the United States Department of Veterans Affairs National Cemetery Administration for inscription on a memorial marker as follows:

1. The applicant must certify that the proposed new emblem of belief represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent.

2. In the absence of evidence to the contrary, the department shall accept as genuine an applicant's statement of the religious or functionally equivalent belief system of a decedent.

(d) If the department determines that any application under this section is incomplete, the department must notify the applicant in writing of any missing information and must notify the applicant in writing that no further action on the application will be taken until the missing information is provided.

(5) The department shall place a memorial marker for any approved application at or near the location of the fatality in a fashion that reduces driver distraction and positions the marker as near the right-of-way line as possible.

(6) Memorial markers are intended to remind passing motorists of the dangers of unsafe driving and are not intended for visitation. The department shall remove a memorial marker if the department determines the presence of the marker creates a safety hazard. In such cases, the department shall post a notice near where the marker was located indicating that the marker has been removed and provide contact information for pickup of the marker. The department shall store any removed markers for at least 60 days. If after 60 days the memorial is not claimed, the department may dispose of the marker as it deems necessary.

Section 8. Paragraph (c) of subsection (6) of section 337.11, Florida Statutes, is amended to read:

337.11 Contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.—

(6)

(c) When the department determines that it is in the best interest of the public for reasons of public concern, economy, improved operations, or safety, and only for contracts for construction and maintenance which do not exceed $250,000 when circumstances dictate rapid completion of the work, the department may~~, up to the amount of $120,000,~~ enter into contracts ~~for construction and maintenance~~ without advertising and receiving competitive bids. The department may enter into such contracts only upon a determination that the work is necessary for one of the following reasons:

1. To ensure timely completion of projects or avoidance of undue delay for other projects;

2. To accomplish minor repairs or construction and maintenance activities for which time is of the essence and for which significant cost savings would occur; or

3. To accomplish nonemergency work necessary to ensure avoidance of adverse conditions that affect the safe and efficient flow of traffic.

The department shall make a good faith effort to obtain two or more quotes, if available, from qualified contractors before entering into any contract. The department shall give consideration to disadvantaged business enterprise participation. However, when the work exists within the limits of an existing contract, the department shall make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract.

Section 9. Subsection (5) is added to section 338.227, Florida Statutes, to read:

338.227 Turnpike revenue bonds.—

(5) Notwithstanding s. 215.82, bonds issued pursuant to this section are not required to be validated pursuant to chapter 75 but may be validated at the option of the Division of Bond Finance. Any complaint about such validation must be filed in the circuit court of the county in which the seat of state government is situated, and the clerk shall publish the notice as required by s. 75.06 only in the county in which the complaint is filed. The complaint and order of the circuit court must be served on the state attorney of the circuit in which the action is pending.

Section 10. Paragraph (e) of subsection (7) of section

339.135, Florida Statutes, is amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

(e) Notwithstanding paragraphs (d), ~~and~~ (g), and (h) and ss. 216.177(2) and 216.351, the secretary may request the Executive Office of the Governor to amend the adopted work program when an emergency exists, as defined in s. 252.34, and the emergency relates to the repair or rehabilitation of any state transportation facility. The Executive Office of the Governor may approve the amendment to the adopted work program and amend that portion of the department's approved budget if a delay incident to the notification requirements in paragraph (d) would be detrimental to the interests of the state. However, the department shall immediately notify the parties specified in paragraph (d) and provide such parties written justification for the emergency action within 7 days after approval by the Executive Office of the Governor of the amendment to the adopted work program and the department's budget. The adopted work program may not be amended under this subsection without certification by the comptroller of the department that there are sufficient funds available pursuant to the 36-month cash forecast and applicable statutes.

Section 11. Section 339.2405, Florida Statutes, is amended to read:

339.2405 Florida Highway Beautification Grant Program ~~Council~~.—

(1) There is created within the Department of Transportation the Florida Highway Beautification Grant Program

for the purpose of awarding grants to local governmental entities for beautification of roads on the State Highway System as provided in subsections (3) and (4). The department shall ~~Council. It shall consist of seven members appointed by the Governor. All appointed members must be residents of this state. One member must be a licensed landscape architect, one member must be a representative of the Florida Federation of Garden Clubs, Inc., one member must be a representative of the Florida Nurserymen and Growers Association, one member must be a representative of the department as designated by the head of the department, one member must be a representative of the Department of Agriculture and Consumer Services, and two members must be private citizens. The members of the council shall serve at the pleasure of the Governor.~~

~~(2) Each chair shall be selected by the council members and shall serve a 2-year term.~~

~~(3) The council shall meet no less than semiannually at the call of the chair or, in the chair's absence or incapacity, at the call of the head of the department. Four members shall constitute a quorum for the purpose of exercising all of the powers of the council. A vote of the majority of the members present shall be sufficient for all actions of the council.~~

~~(4) The council members shall serve without pay but shall be entitled to per diem and travel expenses pursuant to s. 112.061.~~

~~(5) A member of the council may not participate in any discussion or decision to recommend grants to any qualified local government with which the member is associated as a member of the governing body or as an employee or with which the member~~

~~has entered into a contractual arrangement.~~

~~(6) The council may prescribe, amend, and repeal bylaws governing the manner in which the business of the council is conducted.~~

~~(7)~~ (a) ~~The duties of the council shall be to~~:

(a) ~~1.~~ Provide information to local governments and local highway beautification councils regarding the state highway beautification grants program.

(b) ~~2.~~ Accept grant requests from local governments.

(c) ~~3.~~ Review grant requests for compliance with department ~~council~~ rules.

(d) ~~4.~~ Establish rules for evaluating and prioritizing the grant requests. The rules must include, but are not limited to, an examination of each grant's aesthetic value, cost-effectiveness, level of local support, feasibility of installation and maintenance, and compliance with state and federal regulations. Rules adopted by the department ~~council~~ which it uses to evaluate grant applications must take into consideration the contributions made by the highway beautification project in preventing litter.

(e) ~~5.~~ Maintain a prioritized list of approved grant requests. The list must include recommended funding levels for each request and, if staged implementation is appropriate, funding requirements for each stage shall be provided.

~~6. Assess the feasibility of planting and maintaining indigenous wildflowers and plants, instead of sod groundcovers, along the rights-of-way of state roads and highways. In making such assessment, the council shall utilize data from other states which include indigenous wildflower and plant species in~~

~~their highway vegetative management systems.~~

~~(b) The council may, at the request of the head of the department, review and make recommendations on any other highway beautification matters relating to the State Highway System.~~

~~(8) The head of the department shall provide from existing personnel such staff support services to the council as are necessary to enable the council to fulfill its duties and responsibilities.~~

(2) ~~(9)~~ Local highway beautification councils may be created by local governmental entities or by the Legislature. Prior to being submitted to the department ~~council~~, a grant request must be approved by the local government or governments of the area in which the project is located.

(3) ~~(10)~~ The head of the department~~, after receiving recommendations from the council,~~ shall award grants to local governmental entities that have submitted grant requests for beautification of roads on the State Highway System and which requests are on the ~~council's~~ approved list. The grants shall be awarded in the order they appear on the ~~council's~~ prioritized list and in accordance with available funding.

(4) ~~(11)~~ State highway beautification grants may be requested only for projects to beautify through landscaping roads on the State Highway System. The grant request shall identify all costs associated with the project, including sprinkler systems, plant materials, equipment, and labor. A grant shall provide for the costs of purchase and installation of a sprinkler system, the cost of plant materials and fertilizer, and may provide for the costs for labor associated with the installation of the plantings. Each local government

that receives a grant is ~~shall be~~ responsible for any costs for water, for the maintenance of the sprinkler system, for the maintenance of the landscaped areas in accordance with a maintenance agreement with the department, and, except as otherwise provided in the grant, for any costs for labor associated with the installation of the plantings. The department may provide, by contract, services to maintain such landscaping at a level not to exceed the cost of routine maintenance of an equivalent unlandscaped area.

~~(12) The council shall annually submit to the head of the Department of Transportation a proposal recommending the level of grant funding.~~

Section 12. Section 343.52, Florida Statutes, is reordered and amended to read:

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

(2)~~(1)~~ "Authority" means the South Florida Regional Transportation Authority.

(3)~~(2)~~ "Board" means the governing body of the authority.

(4) "Department" means the Department of Transportation.

(1)~~(3)~~ "Area served" means Miami-Dade, Broward, and Palm Beach Counties. However, this area may be expanded by mutual consent of the authority and the board of county commissioners of Monroe County. The authority may not expand into any additional counties without the department's prior written approval.

(8)~~(4)~~ "Transit system" means a system used for the transportation of people and goods by means of, without limitation, a street railway, an elevated railway having a fixed guideway, a commuter railroad, a subway, motor vehicles, or

motor buses, and includes a complete system of tracks, stations, and rolling stock necessary to effectuate passenger service to or from the surrounding regional municipalities.

(7)~~(5)~~ "Transit facilities" means property, avenues of access, equipment, or buildings built and installed in Miami-Dade, Broward, and Palm Beach Counties which are required to support a transit system.

(6) "Member" means the individuals constituting the board.

(5)~~(7)~~ "Feeder transit services" means a transit system that transports passengers to or from stations within or across counties.

Section 13. Present subsections (4) and (5) of section 343.54, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

343.54 Powers and duties.—

(4) Notwithstanding any other provision of this part, the authority may not enter into, extend, or renew any contract or other agreement under this part without the department's prior review and written approval of the authority's proposed expenditures if such contract or agreement may be funded, in whole or in part, with funds provided by the department.

Section 14. Paragraph (c) of subsection (4) of section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.—

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, until as provided in paragraph (d), the department shall transfer annually from the

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State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2.

(c)1. Funds provided to the authority by the department under this subsection constitute state financial assistance provided to a nonstate entity to carry out a state project subject to the provisions of ss. 215.97 and 215.971. The department shall provide the funds in accordance with the terms of a written agreement to be entered into between the authority and the department which shall provide for department review, approval and audit of authority expenditure of such funds, and shall include such other provisions as are required by applicable law. The department is specifically authorized to agree to advance the authority one-fourth of the total funding provided under this subsection for a state fiscal year at the beginning of each state fiscal year, with monthly payments over the fiscal year on a reimbursement basis as supported by invoices and such additional documentation and information as the department may reasonably require, and a reconciliation of the advance against remaining invoices in the last quarter of the fiscal year ~~may not be committed by the authority without the approval of the department, which may not be unreasonably withheld. At least 90 days before advertising any procurement or renewing any existing contract that will rely on state funds for payment, the authority shall notify the department of the proposed procurement or renewal and the proposed terms thereof. If the department, within 60 days after receipt of notice, objects in writing to the proposed procurement or renewal, specifying its reasons for objection, the authority may not~~

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~~proceed with the proposed procurement or renewal. Failure of the department to object in writing within 60 days after notice shall be deemed consent. This requirement does not impair or cause the authority to cancel contracts that exist as of June 30, 2012~~.

2. To enable the department to evaluate the authority's proposed uses of state funds, the authority shall annually provide the department with its proposed budget for the following authority fiscal year and shall promptly provide the department with any additional documentation or information required by the department for its evaluation of the proposed uses of the state funds.

Section 15. Subsection (2) of section 215.82, Florida Statutes, is amended to read:

215.82 Validation; when required.—

(2) Any bonds issued pursuant to this act which are validated shall be validated in the manner provided by chapter 75. In actions to validate bonds to be issued in the name of the State Board of Education under s. 9(a) and (d), Art. XII of the State Constitution and bonds to be issued pursuant to chapter 259, the Land Conservation Program, the complaint shall be filed in the circuit court of the county where the seat of state government is situated, the notice required to be published by s. 75.06 shall be published only in the county where the complaint is filed, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending. In any action to validate bonds issued pursuant to s. 1010.62 or issued pursuant to s. 9(a)(1), Art. XII of the State Constitution or issued pursuant to s.

215.605 ~~or s. 338.227~~, the complaint shall be filed in the circuit court of the county where the seat of state government is situated, the notice required to be published by s. 75.06 shall be published in a newspaper of general circulation in the county where the complaint is filed and in two other newspapers of general circulation in the state, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending; provided, however, that if publication of notice pursuant to this section would require publication in more newspapers than would publication pursuant to s. 75.06, such publication shall be made pursuant to s. 75.06.

Section 16. Paragraph (d) of subsection (2) of section 343.53, Florida Statutes, is amended to read:

343.53 South Florida Regional Transportation Authority.—

(2) The governing board of the authority shall consist of 10 voting members, as follows:

(d) If the authority's service area is expanded pursuant to s. 343.54(6) ~~s. 343.54(5)~~, the county containing the new service area shall have two members appointed to the board as follows:

1. The county commission of the county shall elect a commissioner as that commission's representative on the board. The commissioner must be a member of the county commission when elected and for the full extent of his or her term.

2. The Governor shall appoint a citizen member to the board who is not a member of the county commission but who is a resident and a qualified elector of that county.

Section 17. Section 427.011, Florida Statutes, is reordered and amended to read:

427.011 Definitions.—For the purposes of ss. 427.011-427.017:

(9) ~~(1)~~ "Transportation disadvantaged" means those persons who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk as defined in s. 411.202.

(5) ~~(2)~~ "Metropolitan planning organization" means the organization responsible for carrying out transportation planning and programming in accordance with the provisions of 23 U.S.C. s. 134, as provided in 23 U.S.C. s. 104(f)(3).

(1) ~~(3)~~ "Agency" means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or any other unit or entity of the state or of a city, town, municipality, county, or other local governing body or a private nonprofit transportation service-providing agency.

(11) ~~(4)~~ "Transportation improvement program" means a staged multiyear program of transportation improvements, including an annual element, which is developed by a metropolitan planning organization or designated official planning agency.

(2) ~~(5)~~ "Community transportation coordinator" means a transportation entity recommended by a metropolitan planning organization, or by the appropriate designated official planning agency as provided for in ss. 427.011-427.017 in an area outside the purview of a metropolitan planning organization, to ensure that coordinated transportation services are provided to the

transportation disadvantaged population in a designated service area.

(12) ~~(6)~~ "Transportation operator" means one or more public, private for-profit, or private nonprofit entities engaged by the community transportation coordinator to provide service to transportation disadvantaged persons pursuant to a coordinated system service plan.

(3) ~~(7)~~ "Coordinating board" means an advisory entity in each designated service area composed of representatives appointed by the metropolitan planning organization or designated official planning agency, to provide assistance to the community transportation coordinator relative to the coordination of transportation services.

(8) "Purchasing agency" means a department or agency whose head is an ex officio, nonvoting adviser to the commission, or an agency that purchases transportation services for the transportation disadvantaged.

(7) ~~(9)~~ "Paratransit" means those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service. Paratransit service is provided by taxis, limousines, "dial-a-ride," buses, transportation network companies, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature.

(10) "Transportation disadvantaged funds" means any local government, state, or available federal funds that are for the transportation of the transportation disadvantaged. Such funds may include, but are not limited to, funds for planning,

Medicaid transportation, administration, operation, procurement, and maintenance of vehicles or equipment and capital investments. Transportation disadvantaged funds do not include funds for the transportation of children to public schools.

(4) ~~(11)~~ "Coordination" means the arrangement for the provision of transportation services to the transportation disadvantaged in a manner that is cost-effective, efficient, and reduces fragmentation and duplication of services.

(6) ~~(12)~~ "Nonsponsored transportation disadvantaged services" means transportation disadvantaged services that are not sponsored or subsidized by any funding source other than the Transportation Disadvantaged Trust Fund.

Section 18. The Secretary of Transportation may enroll the State of Florida in any federal pilot program or project for the collection and study of data for the review of federal or state roadway safety, infrastructure sustainability, congestion mitigation, transportation system efficiency, autonomous vehicle technology, or capacity challenges.

Section 19. Except as otherwise provided in this act, 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 1118 (304644)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Gainer and others
SUBJECT:	Transportation
DATE:	April 24, 2017
REVISED:	

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1118 reflects the Department of Transportation's (FDOT) 2017 Legislative Package. Specifically, the bill:

- Directs the FDOT, in consultation with the Department of Highway Safety and Motor Vehicles (DHSMV), to develop a Florida Smart City Challenge grant program;
- Increases the allowable gross vehicle weight for vehicles using natural-gas fueling systems by up to 2,000 pounds under certain conditions, resulting in a reduced overweight penalty and avoiding a potential loss of federal funds;
- Revises autonomous vehicle alert system requirements, consistent with current law, to clarify that an autonomous vehicle may operate in autonomous mode without a person physically present in the vehicle;
- Applies certain insurance coverage requirements, should legislation addressing insurance for transportation network companies (TNCs) become law, to autonomous vehicles used by TNCs to provide transportation, regardless of whether a human operator is physically present in the vehicle when the ride occurs;
- Defines the term "automated mobility district," directs the FDOT to designate such districts and, in determining a community's eligibility for designation, to consider applicable federal agency criteria for such districts and apply the criteria to eligible developments.
- Aligns state and federal law by mandating bridge inspections at regular intervals as required by the Federal Highway Administration, as opposed to intervals not exceeding two years,

resulting in compliance with revised national bridge inspection requirements and avoiding a potential but likely insignificant diversion of federal funds;
- Directs the FDOT to establish a process for applications for placement of roadside memorial markers at or near the location of traffic-related fatalities on the State Highway System to raise public awareness and remind motorists to drive safely and to establish criteria for the design and fabrication of the markers; provides for incorporation of emblems of belief on such markers under certain conditions; provides requirements for the placement of such markers; and directs the FDOT to remove such markers under certain conditions, subject to certain notice requirements.
- Increases the current $120,000 cap on "fast response" contracts to $250,000 to account for increased construction costs due to inflation;
- Allows turnpike bonds to be validated at the option of the Division of Bond Finance (DBF) and limits the location of publication of certain related notices to Leon County;
- Repeals the Florida Highway Beautification Council and creates the Florida Highway Beautification Grant Program within the FDOT;
- Defines "department" to mean the FDOT for purposes of part II of ch. 343, F.S., relating to the South Florida Regional Transportation Authority (SFRTA);
- Prohibits the SFRTA from entering into, extending, or renewing any contract without the FDOT's prior review and written approval of the proposed expenditures if such contract may be funded with FDOT-provided funds;
- Deems funds provided by the FDOT to the SFRTA to be state financial assistance subject to specified requirements;
- Requires the FDOT to provide funds to the SFRTA in accordance with a written agreement containing certain provisions;
- Authorizes the FDOT to advance funds to the SFRTA at the start of each fiscal year, with monthly payments for maintenance and dispatch on the South Florida Rail Corridor over the fiscal year on a reimbursement basis;
- Expressly includes transportation network companies (TNCs) in the list of providers of services for the transportation disadvantaged;
- Authorizes the FDOT Secretary to enroll the state in any federal pilot program or project for the collection and study of specified types of transportation-related data;
- Deletes and revises cross-references to conform to changes made in the act.
- Provides the bill take effect on July 1, 2017

The bill's provisions have both indeterminate negative and positive fiscal impacts on state funds, of which combined are neutral. The bill may have impacts to revenues and expenditures related to the SFRTA and the DBF. See Section V., "Fiscal Impact Statement," for details.

II. Present Situation:

Due to the disparate issues in the bill, the present situation for each section is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Florida Smart City Challenge Grant Program (Section 1)

Present Situation:

The United States Department of Transportation (USDOT) launched a Smart City Challenge in December of 2015. The challenge asked mid-sized cities "to develop ideas for an integrated, first-of-its-kind smart transportation system that would use data, applications, and technology to help people and goods move more quickly, cheaply, and efficiently."[1] The USDOT committed up to $40 million to one winning city.[2] The USDOT received 78 applications from cities across America, including the following cities in Florida: Jacksonville, Miami, Orlando, St. Petersburg, Tallahassee, and Tampa. However, no Florida city received any funding.

Ultimately, Columbus, Ohio won the challenge by proposing "a comprehensive, integrated plan addressing challenges in residential, commercial, freight, and downtown districts using a number of new technologies, including connected infrastructure, an integrated data platform, autonomous vehicles, and more."[3]The USDOT then worked with seven finalists to further develop the ideas proposed by the cities and, in October of 2016, announced an additional $65 million in grants to support advanced technology transportation projects. Again, no Florida city was among the finalists.

Effect of Proposed Changes:

Section 1 of the bill creates s. 316.0898, F.S., to direct the FDOT, in consultation with the Department of Highway Safety and Motor Vehicles, to develop the Florida Smart City Challenge grant program and establish grant award requirements for municipalities or regions. Grant applicants must demonstrate and document the adoption of emerging technologies and their impact on the transportation system, and must address at least the following focus areas:

- Autonomous vehicles;
- Connected vehicles;[4]
- Sensor-based infrastructure;
- Collecting and using data;
- Electric vehicles, including charging stations; and
- Developing strategic models and partnerships;

The stated goals of the grant program include, without limitation:

- Identifying transportation challenges and identifying how emerging technologies can address those challenges;

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[1] *See* the USDOT website available at: https://www.transportation.gov/smartcity. (Last visited April 11, 2017.)
[2] *See* the USDOT website available at: https://www.transportation.gov/sites/dot.gov/files/docs/Smart%20City%20Challenge%20Lessons%20Learned.pdf. (Last visited April 11, 2017.)
[3] *See* the USDOT website available at: https://www.transportation.gov/smartcity/winner. (Last visited April 11, 2017.)
[44] These are "vehicles that use any of a number of different communication technologies to communicate with the driver, other cars on the road (vehicle-to-vehicle [V2V], roadside infrastructure (vehicle-to-infrastructure [V2I]), and the 'Cloud.'" *See* the Center for Advanced Automotive Technology website available at: http://autocaat.org/Technologies/Automated_and_Connected_Vehicles/. (Last visited April 14, 2017.)

- Determining the emerging technologies and strategies that have the potential to provide the most significant impacts;
- Encouraging municipalities to take significant steps to integrate emerging technologies into their day-to-day operations;
- Identifying the barriers to implementing the grant program and communicating those barriers to the Legislature and appropriate agencies and organizations;
- Leveraging the initial grant to attract additional public and private investments;
- Increasing the state's competitiveness in the pursuit of grants from the USDOT, the United States Department of Energy (USDOE), and other federal agencies;
- Committing to the continued operation of programs implemented in connection with the grant;
- Serving as a model for municipalities nationwide;
- Documenting the costs and impacts of the grant program and lessons learned during implementation; and
- Identify solutions that will demonstrate local or regional economic impact.

The FDOT is directed to develop eligibility, application, and selection criteria for the program grants and a plan for the promotion of the grant program to municipalities or regions of the state as an opportunity to compete for grant funding, including the award of grants to a single recipient and secondary grants to specific projects of merit within other applications. The FDOT may contract with a third party demonstrating knowledge and expertise in that section's focuses and goals to provide guidance in the development of that section's requirements.

The FDOT must submit the grant program guidelines and plans for promotion of the program to the Governor, Senate President, and House Speaker on or before January 1, 2018. Lastly, the new s.316.0898, F.S., expires on July 1, 2018.[5]

Natural Gas-Fueled Vehicle Weight (Section 2)

Present Situation:

Motor Vehicle Weights and Overweight Penalties

The rate of damage to roads and bridges generally increases as vehicle weight increases, resulting in higher maintenance and replacement costs and potentially creating unsafe conditions. Maximum legal vehicle weights are established for all public roads and bridges and allow compliant vehicles to travel most public highways of the state without causing excessive road damage or bridge failures. However, some roads and bridges have lower weight limits due to their age, condition, or design, and these facilities have posted weight limits; *i.e.*, their lower weight limits are identified through signage at the facility. Vehicles exceeding the maximum weight limits on a facility, including posted facilities, are presumed to have damaged the highways of the state and are subject to fines.[6]

[5] SB 2500 currently authorizes the FDOT to use up to $75,000 to establish the Florida Smart City Challenge Grant Program.
[6] *See* ss. 316.545 and 316.555, F.S.

Gross vehicle weight is the total weight of a vehicle (or combination of vehicles) and any cargo carried by the vehicle.[7] Federal and state laws generally provide that gross vehicle weight may not exceed 80,000 pounds for both the interstate and non-interstate highway system, [8] or the maximum allowed by the Federal Bridge Formula.[9] In Florida, the maximum weight limit is 22,000 pounds on a single axle, and 44,000 pounds on a tandem axle.[10] These limits do not apply to those vehicles and loads that cannot be easily dismantled or divided (*i.e.*, "non-divisible"), or to other vehicles exceeding the maximum weight limits, if a special permit has been issued in accordance with applicable state laws.[11]

However, the vehicle's number of axles and the distance between the axles in part controls a vehicle's maximum allowable weight. Thus, a vehicle's maximum allowable gross weight may be reduced because the concentration of weight on a particular axle may reach unacceptable limits. For example, pavement and bridge stress is greater for a 30-foot truck with two axles and a gross vehicle weight of 50,000 pounds than a 54-foot tractor-trailer combination of the same weight because the tractor-trailer distributes the load over a greater area. Therefore, the 30-foot truck will have a lower maximum allowable weight.

For weight violations, including violations of weight criteria contained in a special permit, the penalty is as established in s. 316.545(3)(a), F.S., *i.e.*, $10 for 200 pounds or less and 5 cents per pound for each pound over 200 pounds. Unlawful axle weights are penalized at $10 for the first 600 pounds, if the gross weight of the vehicle (or vehicle combination) does not exceed the maximum allowable gross weight.[12]

For each violation of the operational or safety restrictions established in a special permit, *e.g.*, using a restricted bridge, the penalty may be as high as $1,000. However, the cumulative total for multiple violations may not exceed $1,000.[13]

These penalties are deposited into the State Transportation Trust Fund and used for roadway maintenance and repair.[14]

Cargo Capacity of Vehicles Fueled by Natural Gas Compared to Gasoline or Diesel-Fueled Vehicles

According to the U.S. Department of Energy, about 150,000 vehicles in this country are powered by natural gas, many of which are heavy-duty vehicles.[15] Natural gas vehicles (NGVs) are reported to be similar to gasoline or diesel-fueled vehicles with respect to power, acceleration,

[7] Section 316.003(27), F.S.
[8] *See* 23 U.S.C. 127 (2015) and s. 316.535, F.S.
[9] This formula is used to determine the maximum allowable weight that any set of axles on a motor vehicle may carry on the Interstate Highway System. For further detail, see the Federal Highway Administration website: http://ops.fhwa.dot.gov/freight/sw/brdgcalc/calc_page.htm. (Last visited January 20, 2017.)
[10] *See* the Florida Highway Patrol *Commercial Motor Vehicle Manual,* July 2016, at p. 8, available at: https://www.flhsmv.gov/fhp/CVE/2015truckingmanual.pdf. (Last visited January 26, 2017.)
[11] 23 U.S.C. 127(a) (2015) and s. 316.550, F.S...
[12] Section 316.545(3)(a), F.S.
[13] 316.550(10)(c), F.S.
[14] Section 316.545(6), F.S.
[15] *See* the U.S. Department of Energy Alternative Fuels Data Center website available at: http://www.afdc.energy.gov/vehicles/natural_gas.html. (Last visited November 18, 2016.)

and cruising speed; and the use of natural gas as fuel provides additional advantages, such as its domestic availability, its relative low cost, and lower emissions.[16] However, these advantages may be offset by displacement of cargo capacity, due to the heavier weight of NGV fueling systems relative to gasoline or diesel systems.[17]

Fast Act Natural Gas Vehicle Weight Allowance

The Fixing America's Surface Transportation Act (FAST Act), which authorized Federal surface transportation programs for fiscal years 2016-2020, contained a number of incentives for natural gas. In apparent recognition of the potential displacement of cargo capacity due to the heavier weight of NGVs, the FAST Act authorized a vehicle, if operated by an engine fueled primarily[18] by natural gas, to exceed any (single axle, tandem axle and bridge formula) weight limit (up to a maximum gross vehicle weight of 82,000 pounds) by an amount that is equal to the difference between:

- The weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle, and
- The weight of a comparable diesel tank and fueling system.[19]

The Federal Highway Administration (FHWA) has advised states to review state statutes, regulations, and procedures, as well as load rating and posting calculations and enforcement practices, for necessary updating.[20] Further, the FHWA noted that while the federally increased weight allowance does not preempt a state from enforcing *state* weight limits on all highways, it does "prevent[] the FHWA from imposing funding sanctions if a state authorizes the additional weight limit on its Interstate system."[21]

Florida law has long adhered to the general maximum weight limits contained in the Federal law,[22] and the FDOT issues special permits for vehicles transporting non-divisible loads and for other vehicles exceeding maximum weight limits.[23] Florida law currently grants a 500-pound weight allowance for idle reduction technology consistent with federal law, but does not authorize the additional weight for NGVs allowed in the FAST Act.[24]

FDOT Permitting of NGVs

In response to the FAST Act, the FDOT performed an assessment to determine if any bridges, other than those currently posted for weight, would require posting because of the additional

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[16] *Id.* at: http://www.afdc.energy.gov/fuels/natural_gas_benefits.html. (Last visited November 18, 2016.)
[17] *Id.*.. "The driving range of NGVs is generally less than that of comparable conventional vehicles because of the lower energy density of natural gas. Extra storage tanks can increase range, but the additional weight may displace cargo capacity."
[18] Some NGVs are fueled solely by natural gas, some are bi-fueled with two separate fueling systems that enable them to run on either natural gas or gasoline, and some are dual-fueled. Dual-fueled vehicles "are traditionally limited to heavy-duty application, have fuel systems that run on natural gas, and use diesel fuel for ignition assistance." *Supra* note 8.
[19] P.L. 114-94, s. 1410 (2015). *See also* the Federal Highway Administration Memorandum dated February 24, 2016, *Information: Fixing America's Surface Transportation Act (FAST Act) Truck Size and Weight Provisions.* (On file in the Senate Transportation Committee.)
[20] *Id.*, Memorandum Question and Answer 16.
[21] *Id.*, Question and Answer 14.
[22] *See* s. 316.535, F.S.
[23] *See* s. 316.550, F.S.
[24] Section 316.545(3)(b), F.S.

weight allowance for NGVs authorized in the Act. The FDOT advises that the study concluded that the additional weight of NGVs would not require bridges to be re-load rated or posted.[25] The FDOT also developed a permit process in June of 2016 to allow the operation of NGVs at the new Federal weight limits, but no permits were issued, perhaps because the industry is unaware of the need for such a permit.[26] As a result, the FDOT estimates that approximately 292 citations[27] have been issued, totaling $375.00 in fines, 15 of which have been contested before the Commercial Motor Vehicle Review Board.[28] The FDOT advises no relief was granted for any of the 15 contested citations.[29]

Effect of Proposed Changes:

Section 2 amends s. 316.545(3), F.S., to provide for a specified reduction in the actual gross weight of an NGV, when calculating the penalty for exceeding maximum weight limits, so long as the actual gross weight of the vehicle does not exceed 82,000 pounds, exclusive of the existing 500-pound weight allowance for idle reduction technology. The bill will create greater uniformity between federal and state law, which is especially important for truck drivers doing interstate business, and avoids a potential withholding of federal funds.

If an NGV is found to be overweight, then the penalty will be calculated by reducing the actual gross vehicle weight by the certified difference in weight between the natural gas tank and fueling system carried by that vehicle, and a comparable diesel tank and fueling system, before applying the currently applicable penalty. If the actual gross weight of the NGV exceeds 80,000 pounds plus the certified weight difference, a penalty of $.05 per pound of excess weight could be assessed.

If the NGV is also equipped with idle reduction technology, the penalty will be calculated by reducing the actual gross vehicle weight by the certified difference in weight between the natural gas tank and fueling system carried by that vehicle and a comparable diesel tank and fueling system, and by an additional 500 pounds. If the actual gross weight of the NGV with idle reduction technology exceeds 80,500 pounds plus the certified weight difference, a penalty of $.05 per pound of excess weight could be assessed.

The bill contains a proof requirement; *i.e.*, the vehicle operator must present a written certification that identifies the weight of the natural gas tank and fueling system, and the difference in weight of a comparable diesel tank and fueling system, upon request of a weight inspector or a law enforcement officer. The certification must originate from the vehicle manufacturer or the installer of the natural gas tank and fueling system.

The bill excludes vehicles described in s. 316.535(6), F.S., from qualifying for the reduced calculation. These vehicles, typically called straight trucks, include dump trucks, concrete

[25] *See* the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)
[26] *Id.*
[27] The FDOT notes this estimate is based on a search for companies that utilize NGVs and received an overweight citation in the last year. Because the citation form is not designed to specify this particular infraction, some of the 292 cases may not be related to the FAST Act. *Id.*
[28] Section 316.545(7), F.S., establishes the Board within the FDOT and authorizes the Board to review any penalty imposed under chapter 316, F.S.
[29] *Supra* note 11.

mixing trucks, trucks engaged in waste collection and disposal, and fuel oil and gasoline trucks designed and constructed for special type work. The cargo unit and the power unit on these trucks sit on the same frame,[30] meaning that the concentration of weight is greater than, for example, a combination vehicle with an axle configuration that distributes the weight over a greater area. These vehicles continue to be limited to a gross weight of 70,000 pounds.

Autonomous Vehicle Alert System Clarification (Section 5)

Present Situation:

Section 316.003(2), F.S., defines "autonomous vehicle" as any vehicle equipped with autonomous technology. That subsection also includes a definition of "autonomous technology," which means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed *without the active control or monitoring by a human operator*.[31] If a vehicle is equipped with technology that requires the active control or monitoring by a human operator, that vehicle does not meet the definition of "autonomous vehicle" under Florida law.

Section 316.85, F.S., authorizes a person who possesses a valid driver license to operate an autonomous vehicle in autonomous mode on roads in this state if the vehicle is equipped with autonomous technology as defined in s. 316.003(2), F.S. A person is deemed to be the operator of an autonomous vehicle operating in autonomous mode when the person causes the vehicle's autonomous technology to engage, regardless of whether the person is physically present in the vehicle while the vehicle is operating in autonomous mode. Thus, under Florida law, an autonomous vehicle may be operated in autonomous mode even if a person is not physically present in the vehicle.

Section 319.145, F.S., requires autonomous vehicles registered in this state to:

- Have a system to safely alert the operator if an autonomous technology failure is detected while the technology is engaged. When an alert is given, the *system* must:
  - Require the operator to take control of the autonomous vehicle; or
  - If the operator does not, or is not able to, take control of the autonomous vehicle, be capable of bringing the vehicle to a complete stop.
- Have a means inside the vehicle to visually indicate when the vehicle is operating in autonomous mode; and
- Be capable of being operated in compliance with the applicable traffic and motor vehicle laws of this state.

Effect of Proposed Changes:

Section 5 of the bill amends s. 319.145, F.S., to clarify system requirements when an alert is given. The bill provides that if the *human* operator does not, or is not able to, take control of the

[30] *See* s. 316.003(76), F.S.

[31] The latter definition does not include a motor vehicle enabled with active safety systems or driver assistance systems, including, without limitation, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warning, or traffic jam and queuing assistant, unless any such system alone or in combination with other systems enables the vehicle on which the technology is installed *to drive without the active control or monitoring by a human operator.*

autonomous vehicle, *or if a human operator is not physically present in the vehicle,* the system must be capable of bringing the vehicle to a complete stop. This revision is consistent with current law allowing an autonomous vehicle to operate in autonomous mode without a person physically present in the vehicle.

Transportation Network Companies/Autonomous Vehicles/Insurance (Section 3)

Present Situation: Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as "transportation network companies" (TNCs), rather than as vehicles for hire.

TNCs use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and drives to pick up the passenger. Once at the destination, payment is made through the phone application.

Drivers generally use their personal vehicles, and most personal automobile insurance policies contain a "livery" exclusion that excludes coverage if the vehicle is carrying passengers for hire.[32] Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is transporting passengers, but such insurance is not required. This could lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage. In contrast, taxis and limousines must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, up to $250,000 per incident for bodily injury, and $50,000 for property damage.[33]

Issues relating to insurance coverage for TNCs, and other TNC-related matters, have been under review by the Florida Legislature in recent years. The Florida Senate is currently considering legislation that would create uniform statewide minimum insurance requirements for TNCs and TNC drivers. Generally, when a TNC driver is logged onto the digital network[34] but not engaged in a prearranged ride,[35] the legislation requires:

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

[32] The exclusion in Florida law is mentioned in s. 627.041(8), F.S.
[33] Section 324.032(1)(a), F.S.
[34] CS/CS/SB 340 currently defines "digital network" to mean any online-enabled technology application service, website, or system offered or used by a TNC that enables the prearrangement of rides with TNC drivers.
[35] CS/CS/SB 340 currently defines "prearranged ride" to mean the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a TNC, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle.

- Personal Injury Protection (PIP) benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405, F.S.;[36] and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.[37]

When a TNC driver is engaged in a prearranged ride, the following insurance requirements apply:

- Primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine[38] under ss. 627.730-627.7405, F.S.; and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.[39]

Interest in the use of autonomous vehicles in ridesharing services is increasing, including with respect to fully autonomous vehicles that do not require drivers. General Motors reportedly paid $500 million for a stake and strategic alliance in Lyft to develop the use of autonomous vehicles in ridesharing and recently spent $1 billion to buy a technology company that has self-driving cars on roads in California.[40]Current Florida law does not specifically address insurance requirements for autonomous vehicles, or for autonomous vehicles used by TNCs.

Effect of Proposed Changes:

Section 3 of the bill creates s. 316.851, F.S., with an effective on the same date that the TNC legislation currently under consideration, or similar legislation, takes effect, if such legislation is enacted in the 2017 Regular Session or in any extension thereof. In that case, the bill would require an autonomous vehicle used by a TNC *to provide a prearranged ride* to be covered by automobile insurance as required by s. 627.748, F.S., created in that TNC legislation, regardless of whether a human operator is physically present in the vehicle when the ride occurs. As the legislation currently stands, the required coverage would be primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage, and uninsured and underinsured vehicle coverage as required by s. 627.727, F.S. The coverage ultimately specified in that legislation, if enacted, would be required coverage for an autonomous vehicle used by a

[36] These provisions, known as the No-Fault Law, require coverage for PIP to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits.

[37] Section 627.727(1), F.S., requires uninsured motorist vehicle coverage if a policy provides bodily injury coverage unless it is specifically rejected.

[38] Although the legislation currently requires PIP coverage at the same amounts required of limousines, limousines are excluded from PIP requirements under s 627.733(1)(a), F.S. Thus, the effect of this provision should it remain in the TNC legislation and be enacted would be to require no PIP coverage when an autonomous vehicle is engaged in a prearranged ride, regardless of whether a human operator is physically present in the vehicle when the ride occurs.

[39] *See* the CS/CS/SB 340 staff analysis for additional information and details of the legislation, available at: http://www.flsenate.gov/Session/Bill/2017/340/Analyses/2017s00340.rc.PDF. (Last visited April 24, 2017.)

[40] *See Autonomous Cars with Ridesharing Key to GM's Vision for Future Mobility*, available at: http://www.autotrader.com/car-shopping/autonomous-cars-with-ridesharing-key-to-gms-vision-for-future-mobility-254768. *See also Ford Targets Fully Autonomous Vehicle for RideSharing in 2021; Invests in New Tech Companies, Doubles Silicon Valley Team*, available at https://media.ford.com/content/fordmedia/fna/us/en/news/2016/08/16/ford-targets-fully-autonomous-vehicle-for-ride-sharing-in-2021.html . (Last visited April 14, 2017.)

TNC to provide prearranged transportation, regardless of the presence or absence of a human driver.

The bill further requires an autonomous vehicle logged on to a digital network but not engaged in a prearranged ride to maintain insurance coverage as defined in s. 627.748(7)(b), F.S. As the TNC legislation currently stands, subsection (7)(b) requires during the identified period of time:

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;
- PIP benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405, F.S.;[41] and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.

The bill also requires an autonomous vehicle used to provide a transportation service to carry in the vehicle proof of the required coverage at all times while operating in autonomous mode.

Automated Mobility Districts (Section 4)

Present Situation:

The USDOE Office of Energy Efficiency and Renewable Energy (EERE) partners with business, industry, universities, and other organizations with a focus on using renewable energy and energy efficiency technologies. One of EERE's functions is to encourage the growth of such technologies by offering funding opportunities for their development and demonstration.[42] According to the EERE, most grants are selected competitively through funding opportunity announcements (FOAs) and solicitations that occur from time to time. FOA's are posted online with directions and information for finding funding opportunities, for applying for funding, and for managing awards, as well as necessary forms.[43]

The National Renewable Energy Laboratory (NERL) is a research arm of the USDOE. The NERL in a recent study introduced the term "automated mobility districts" to describe a campus-sized implementation of automated vehicle technology to realize the benefits of fully-automated vehicle mobility service. Such districts are envisioned to use fully automated and driverless vehicles, service is confined to a geographic boundary that encompasses a relatively dense area of trip attractions, and mobility within the district is restricted to or dominated by automated vehicles. The NERL has concluded that its initial study "points to the need to better understand ride-sharing scenarios and calls for future research on sustainability benefits of an AMD system at both vehicle and system levels."[44]

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[41] These provisions, known as the No-Fault Law, require coverage for personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant to a limit of $10,000 in medical and disability benefits and $5,000 in death benefits.

[42] *See* the EERE website available at: https://www.energy.gov/eere/funding/eere-funding-opportunities. (Last visited April 14, 2017.)

[43] *Id.*

[44] *See Estimate of Fuel Consumption and GHG Emission Impact on an Automated Mobility District*, Chen, Young, Gonder, and Qi, presented at the 4th International Conference on Connected Vehicles & Expo in Shenzhen, China, October 19-23, 2015, available at: http://www.nrel.gov/docs/fy16osti/65257.pdf. (Last visited April 14, 2017.)

Effect of Proposed Changes:

Section 4 of the bill creates s. 316.853, F.S., to define the term "automated mobility districts" to mean a master planned development or combination of contiguous developments in which the deployment of autonomous vehicles as defined in s. 316.003, F.S., as the basis for a shared mobility system is a stated goal or objective of the development or developments. The FDOT is directed to designate such districts. In determining eligibility of a development for such designation, the FDOT must consider applicable criteria from federal agencies for autonomous mobility districts and apply those criteria to eligible developments in the state.

According to proponents, this proposed statute is expected to increase the likelihood of receiving approval of federal grant applications for funding opportunities associated with the deployment of autonomous vehicles in Florida.

Bridge Inspection Frequency (Section 6)

Present Situation:

National Bridge Inspection Standards

Federal law requires the U.S.D.O.T. Secretary, in consultation with states and Federal agencies having jurisdiction, to inventory all highway bridges on public roads; to classify the bridges according to serviceability, safety, and essentiality for public use; and to assign each bridge a risk-based priority for systematic preventative maintenance, replacement, or rehabilitation.[45] The Federal-aid Highway Act of 1968 required the Secretary to develop regulations establishing national bridge inspection standards with the primary purpose of locating and evaluating existing bridge deficiencies to ensure the safety of the traveling public. The current standards are specified in 23 C.F.R. 650, Subpart C, and apply to all highway bridges located on all public roads.

States are required by the standards to inspect all highway bridges located on public roads that are fully or partially located within the state, except for bridges owned by Federal agencies. Inspections are to be conducted in accordance with the American Association of State Highway and Transportation Officials *Manual for Condition Evaluation of Bridges*, which "serves as a standard and provides uniformity in the procedures and policies for determining the physical condition, maintenance needs, and load capacity of the Nation's highway bridges."[46]

National Inspection Frequency Revisions

Before 2005, with specific reference to frequency of bridge inspections, the national standards generally required each bridge to be inspected at regular intervals not to exceed two years but recognized that certain bridges require inspection at less than two-year intervals. Those earlier standards also recognized that the maximum inspection interval for certain bridges could be appropriately increased in cases in which past inspection reports and favorable experience and analysis justified an increase. States were authorized to submit a detailed proposal and

[45] *See* 23 U.S.C. 144 (2015).
[46] *Federal Register*, Vol. 74, no. 246, Thursday, December 24, 2009, at 68378.

supporting data for approval of an increased interval, but in no case could the maximum time period between inspections exceed four years.

Changes to the standards, effective January 13, 2005, among other items, included expansion of the bridge inspection frequency provisions, such that the FDOT is required to:

- Inspect each bridge at regular intervals not exceeding 24 months for routine inspections;[47] establish criteria to determine the level and frequency of inspection of bridges at less than 24-month intervals, considering such factors as age, traffic characteristics, and known deficiencies; and seek written approval from the Federal Highway Administration (FHWA) to inspect certain bridges at greater than 24-month intervals if past inspection findings and analyses justify an increased interval.
- Inspect underwater structural elements at regular intervals not exceeding 60 months; establish criteria to determine the level and frequency of inspection of these elements at less than 60-month intervals, considering such factors as construction material, environment, age, scour characteristics, condition rating from past inspections, and known deficiencies; and seek written approval from the FHWA to inspect certain underwater structural elements at greater than 60-month intervals, but not exceeding 72 months, if past inspection findings and analysis justify an increased interval.
- Inspect fracture critical members (FCMs)[48] at intervals not to exceed 24 months; establish criteria to determine the level and frequency of inspection of FCMs at less than 24-month intervals, considering such factors as age, traffic characteristics, and known deficiencies; and establish criteria to determine the level and frequency of damage, in-depth, and special inspections.[49]

Compliance Reviews

States are subject to an annual review for compliance with the national standards using 23 metrics[50] that contain criteria for assessing a state's compliance with each metric. A state is notified of any finding of noncompliance and provided an opportunity for correction. If a state ultimately remains noncompliant, the penalty is that the state must dedicate certain funds that would otherwise be available for projects to correcting the noncompliance.[51] The FDOT advises it has received no such notification.[52]

[47] "Routine inspection" is defined as a regularly scheduled inspection consisting of observations and/or measurements needed to determine the physical and functional condition of the bridge, to identify any changes from initial or previously recorded conditions, and to ensure that the structure continues to satisfy present service requirements. 23 C.F.R. 650.305 (4-1-16).
[48] "Fracture critical member" is defined as a member in tension, or with a tension element, whose failure would probably cause a portion of or the entire bridge to collapse. A "fracture critical member inspection" is defined as a hands-on inspection of a fracture critical member or member components that may include visual and other non-destructive evaluation. *Id.*
[49] "Damage inspection" is defined as an unscheduled inspection to assess structural damage resulting from environmental factors or human actions. "In-depth inspection" is defined as a close-up inspection of one or more members above or below the water level to identify any deficiencies not readily detectable using routine inspection procedures, with hands-on inspection being necessary at some locations. "Special inspection" is defined as an inspection scheduled at the discretion of the bridge owner, used to monitor a particular known or suspected deficiency. *Id.*
[50] *See* the *Federal Register*, Vol. 79, No. 91, Monday, May 12, 2014, for a listing of each metric and citations to their locations in the Code of Federal Regulations, as well as an overview of the compliance review process.
[51] These are National Highway Performance Program funds and Surface Transportation Block Grant Program funds. *See* 23 U.S.C. 144(h)(5) (2015).
[52] Telephone conversation with the FDOT staff, January 26, 2017.

Florida Bridge Inspection Law

The existing Florida Statutes do not comply with the described national bridge inspection frequency provisions. Currently, Florida law requires the governmental entity having maintenance responsibility for each bridge on a public transportation facility to inspect such bridges at regular intervals not to exceed two years.[53, 54]

The FDOT does have already-established criteria for routine inspections at intervals not exceeding 24 months, and for certain other inspection levels and frequencies for bridges determined to require inspection at less than 24-month intervals.[55] However, because of the existing state mandate for inspection of each bridge at intervals *not exceeding* 2 years, the FDOT has not developed nor sought written approval from the FHWA for the inspection intervals, criteria, and FHWA approvals required by the revised national standards.

Effect of Proposed Changes:

Section 6 amends s. 335.074(2), F.S., to require bridge inspections at regular intervals *as required by the Federal Highway Administration*, rather than at intervals not exceeding 2 years. This revision will allow the FDOT to seek FHWA approval of its existing procedures, develop and establish the criteria for the required increased inspection intervals, and obtain the FHWA's approval, consistent with the revised national standards. A potential but likely insignificant[56] diversion of federal funds from actual projects to noncompliance correction is avoided.

Highway Memorial Markers/Traffic-Related Fatalities (Section 7)

Present Situation:

Current Florida law contains no provision specifically relating to the placement of roadside memorial markers at or near the location of traffic-related fatalities on the State Highway System.[57] Current state law also contains no provision addressing the use of belief system symbols or imagery on roadside memorial markers. Research suggests some states ban roadside markers outright as a matter of safety, without regard to symbols or imagery. Other states, including Florida, have programs or policies for roadside markers that use a standard round sign with a safety message, such as, "Drive Safely," with the deceased person's name on the sign. Still other states appear to allow roadside memorials for a limited time, after which they are removed, but whether those memorials may display belief system symbols or imagery is not clear. Arizona's Roadside Memorial *Policy* allows markers to "incorporate various types of symbols."[58]

[53] Section 335.074(2), F.S.
[54] Section 335.074(3)(b), F.S., requires each governmental entity to report its inspections to the FDOT.
[55] *See* the FDOT Procedure 850-010-030-j, section 3.2. (Copy on file in the Senate Transportation Committee.)
[56] Telephone conversation with the FDOT staff February 1, 2017.
[57] Section 334.044(24), F.S., defines "State Highway System" as the interstate system and all other roads within the state that were under the jurisdiction of the state on June 10, 1995, and roads constructed by an agency of the state for the State Highway System, plus roads transferred to the state's jurisdiction after that date by mutual consent with another governmental entity, but not including roads so transferred from the state's jurisdiction. These facilities are facilities to which access is regulated.
[58] Copy available at: http://azdot.gov/docs/default-source/about/roadside-memorial-policy.pdf?sfvrsn=0. (Last visited April 5, 2017.)

Emblems of belief are allowed under certain conditions in National Cemeteries. The U.S. Department of Veterans Affairs National Cemetery Administration (Administration) prohibits graphics, logos, or symbols on government-furnished headstones or markers placed in National Cemeteries, other than the available emblems of belief, the Civil War Union Shield, the Civil War Confederate Southern Cross of Honor, and the Medal of Honor insignias.

An "emblem of belief" is defined in federal regulations to mean an emblem that represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent. In the absence of evidence to the contrary, the Veterans Administration will accept as genuine an applicant's statement regarding the sincerity of the religious or functionally equivalent belief system of a deceased eligible individual. The religion or belief system represented by an emblem need not be associated with or endorsed by a church, group or organized denomination. Emblems of belief do not include social, cultural, ethnic, civic, fraternal, trade, commercial, political, professional or military emblems.[59, 60]

Emblems of belief for inscription on government-furnished headstones and markers may be requested by the decedent's next of kin, a person authorized in writing by the next of kin, or a personal representative authorized in writing by the decedent.[61]

After establishing the decedent's initial eligibility, emblems of belief not available for inscription on headstones and markers may be requested by application that contains:

- Certification by the applicant that the proposed new emblem represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent;[62] and
- A three-inch diameter digitized black and white representation of the requested emblem that can be reproduced in a production-line environment.[63]

In the absence of evidence to the contrary, the Administration will accept as genuine an applicant's statement regarding the sincerity of the religious or functionally equivalent belief system. If a dispute arises, federal regulation provides for resolution first in accordance with any specific instructions given by the decedent, second in accordance with the instructions of the decedent's surviving spouse and, if no surviving spouse, in accordance with the agreement and written consent of the decedent's living next of kin.[64]

Effect of Proposed Changes:

Section 7 of the bill creates s. 335.094, F.S., relating to highway memorial markers, modeled after the National Cemetery regulations. Recognizing the FDOT's mission to provide a safe transportation system, the bill expresses Legislative intent that the FDOT allow the use of

[59] 38 C.F.R. 38.632(b)(2) (7-1-16).
[60] *See* the Administration's website, which reflects the currently approved emblems of belief, available at: https://www.cem.va.gov/hmm/emblems.asp. (Last visited April 14, 2017.)
[61] 38 C.F.R. 38.632(b)(1) (7-1-16).
[62] 38 C.F.R. 38.632(e)(1) (7-1-16).
[63] 38 C.F.R. 38.632(e)(2) (7-1-16).
[64] 38 C.F.R. 38.632(g) (7-1-16).

highway memorial markers at or near the location of traffic-related fatalities on the State Highway System to raise public awareness and remind motorists to drive safely, by memorializing people who have died as a result of a traffic-related crash.

The FDOT is required to establish a process, including any forms deemed necessary, for submitting applications for installation of memorial markers. The bill authorizes the following individuals to submit applications:

- A member of the decedent's family, which includes the decedent's spouse; a child, parent, or sibling of the decedent, whether biological, adopted, or step relation; and any lineal or collateral descendant of the decedent; or
- Any individual who is responsible under the laws of this state for the disposition of the unclaimed remains of the decedent or for other matters relating to the interment or memorialization of the decedent.

The FDOT must establish criteria for the design and fabrication of the markers, including, but not limited to, marker components, fabrication material, and size.

At no charge to the applicant, the FDOT is authorized to install a marker described as a round aluminum sign panel with white background and black letters uniformly inscribed "Drive Safely, In Memory Of" followed by the decedent's name.

On request of the applicant and payment of a reasonable fee set by the FDOT to offset production costs, the marker may incorporate the available emblems of belief approved by the National Cemetery Administration. An applicant may request a new emblem not specifically approved by the Administration for inscription on a marker as follows:

- The applicant must certify that the propose new emblem represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent.
- In the absence of evidence to the contrary, the FDOT is directed to accept as genuine an applicant's statement of the religious or functionally equivalent belief system of a decedent.

If the FDOT determines that any application is incomplete, the FDOT is directed to notify the applicant in writing of the missing information, and that no further action on the application will be taken until the missing information is provided.

For any approved application, the FDOT is directed to place a memorial marker at or near the location of the fatality in a fashion that reduces driver distraction and positions the marker as near the right-of-way line as possible.

Lastly, the bill provides that memorial markers are intended to remind passing motorists of the dangers of unsafe driving and are not intended for visitation, and directs the FDOT to remove a marker if the FDOT determines its presence creates a safety hazard. In such cases, the FDOT is directed to post a notice near where the marker was located indicating the marker has been removed and provide contact information for pickup of the marker. The FDOT must store any removed marker for 60 days and may thereafter, at its discretion, dispose of any marker not claimed.

Fast Response Contracts Cap (Section 8)

Present Situation:

FDOT Contracting Authority

Generally, the FDOT is authorized to enter into contracts for the construction and maintenance of all roads designated as part of the State Highway System, the State Park Road System, or of any roads placed under its supervision by law. This authorization includes construction and maintenance contracts for rest areas, weigh stations, and other structures, including roads, parking areas, supporting facilities and associated buildings used in connection with such facilities. With certain exceptions, these contracts must be advertised for competitive bidding, and such contracts generally must be awarded to the lowest responsible bidder.[65]

Required Surety Bond

A successful bidder on a construction or maintenance contract is required to post a surety bond in an amount equal to the awarded contract price with certain exceptions. One exception is the FDOT's authorization to waive all or a portion of the bond requirement if the contract price is $250,000 or less, and if the FDOT determines that the project is of a noncritical nature and that nonperformance will not endanger public health, safety, or property.[66] With respect to construction contracts, the FDOT may waive all or a portion of a bond for contracts of $150,000 or less if the FDOT makes the same determination.[67]

Fast Response Contracting Cap

One of the exceptions to the competitive bidding requirement currently authorizes the FDOT, under certain conditions, to enter into construction and maintenance contracts, up to the amount of $120,000, without advertising and receiving competitive bids. The FDOT may exercise this authority when the FDOT determines that doing so is in the best interest of the public for reasons of public concern, economy, or improved operations or safety, and only when circumstances dictate rapid completion of the work:

- To ensure timely completion of projects or avoidance of undue delay for other projects;
- To accomplish minor repairs or construction and maintenance activities for which time is of the essence and for which significant cost savings would occur; or
- To accomplish nonemergency work necessary to ensure avoidance of adverse conditions that affect the safe and efficient flow of traffic.[68]

The FDOT is required to make a good faith effort to obtain two or more quotes, if available, from qualified contractors before entering into any contract and give consideration to disadvantaged business enterprise participation. If, however, the work exists within the limits of an existing contract, the FDOT must make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract. These contracts fund projects such as

[65] Section 337.11, F.S.
[66] Section 337.18(1), F.S.
[67] Section 337.14(2). F.S.
[68] Section 337.11(6)(c), F.S.

sinkhole repairs that protect roadways and other infrastructure, traffic railing and guardrail repairs needed to protect the safety of the traveling public, and drainage and inlet work that prevents roadway flooding during heavy rain.

When first enacted in 1999, the threshold amount was set at $60,000,[69] and the Legislature increased that amount to the current $120,000 in 2002.[70]

Construction Costs and Inflation

The FDOT advises that the usefulness of this statute has been limited by increased construction costs due to inflation and notes the only issue with meeting the conditions outlined in the statute is the current $120,000 cap. The FDOT performed an analysis to reach an approximate estimate of the current $120,000 contract cap converted to present-day costs, concluding that the current cap, adjusted for inflation, amounts to over $200,000.[71] The FDOT advises that increasing the current cap to $250,000 "will account for increased construction costs and extend the Department's ability to quickly respond to construction and maintenance needs that are in the best interest of safety and the economy."[72]

Effect of Proposed Changes:

Section 8 amends s. 337.11(6)(c), F.S., to increase the current $120,000 threshold amount to $250,000. The FDOT will be authorized to enter into maintenance and construction contracts, after making the necessary determination and when circumstances dictate rapid completion of the work, up to a contract amount of $250,000. The FDOT's described authority to waive all or a portion of a required surety bond remains unchanged.

Turnpike Revenue Bonds/Bond Validation (Sections 9 and 15)

Present Situation:

Bond Validation

The Division of Bond Finance (DBF) is authorized to issue revenue bonds on behalf of the FDOT to finance or refinance the cost of legislatively approved turnpike projects in accordance with s. 11(f), Art. VII of the State Constitution.[73] The state or its agencies may issue revenue bonds without a vote of the electors to finance or refinance the cost of state fixed capital outlay projects[74] authorized by law, and purposes incidental thereto, which bonds are payable solely

[69] Ch. 99-385, Laws of Fla.
[70] Ch. 2002-20, Laws of Fla.
[71] *See* the FDOT's Office of Policy Planning document, *Advisory Inflation Factors for Previous Years (1987-2016)*, available at: http://www.fdot.gov/planning/policy/costs/retrocostinflation.pdf. (Last visited January 25, 2017.)
[72] *See* the FDOT's 2017 Legislative Proposal, *Rapid-Response Contracts-Price Increase*. (On file in the Senate Transportation Committee.)
[73] Section 338.227(3), F.S.
[74] Defined in s. 216.011(1)(p), F.S., to mean the appropriation category used to fund real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility, when appropriated by the Legislature in the fixed capital outlay appropriation category.

from funds other than state tax revenues; e.g., toll revenues.[75] The DBF must submit a proposed bond issuance for approval by the State Board of Administration.[76] The Board, by resolution, may authorize the DBF to issue bonds on behalf of a state agency at one time or from time to time,[77] and the Board must approve all bonds to be issued by the DBF as to fiscal sufficiency.[78]

Once approved, such bonds must be validated under ch. 75, F.S.[79] In a bond validation proceeding, the entity authorized by law to issue bonds files a complaint to establish its authority to incur bonded debt, as well as the legality of all proceedings in connection with the bond issuance.[80] A final judgment validating such bonds is "forever conclusive" and may not be challenged in any court by any person or party.[81]

As described by the DBF with specific reference to Turnpike bonds:

> Bond validation is a judicial procedure through which the legality of a proposed bond issue may be determined in advance of its issuance. It serves to assure bondholders that future court proceedings will not invalidate a government's pledge to repay the bonds. Validation is generally not necessary for established borrowing programs, such as Turnpike bonds, where any legal issues relating to the bonds have been resolved previously. Validation is optional for almost all bonds issued by the Division of Bond Finance, including Public Education Capital Outlay Bonds and University Revenue Bonds. If a constitutional or statutory question arises for a proposed bond issue, a complaint for validation may be filed in circuit court even if validation is not required.[82]

Required Notice Publication

In any action to validate bonds issued pursuant to s. 338.227, F.S., the complaint must be filed in the circuit court of Leon County, and the notice required by s. 75.06, F.S., must be published in a newspaper of general circulation *in Leon County and in two other newspapers of general circulation in the state*.[83] The complaint and order of the circuit court must be served only on the state attorney of the circuit in which the action is pending (the Second Circuit).

Section 75.06(2), F.S., requires the clerk, before the date set for hearing on a complaint to validate Turnpike bonds, to publish a copy of the court's order requiring appearance at the hearing in Leon County at least once each week for two consecutive weeks, commencing with

[75] *See also* s. 215.59(2) and s. 215.79, F.S.
[76] The State Board of Administration, created by the Florida Constitution, is governed by the Governor as the Chair of the Board of Trustees, the Chief Financial Officer, and the Attorney General. The Board is one of several boards and commissions making up the Florida Cabinet system. The Florida Cabinet consists of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.
[77] Section 215.68, (1), F.S.
[78] Section 215.73, F.S.
[79] Section 215.82(2), F.S.
[80] *See* s. 75.02, F.S.
[81] Section 75.09, F.S.
[82] *See* copy of email from the Florida Division of Bond Finance to House staff dated January 27, 2015 (On file with the Senate Committee on Transportation).
[83] Emphasis added.

the first publication, which may not be less than 20 days before the date set for hearing, *in a newspaper in each of the counties where the proceeds of the bonds are to be expended, and in a newspaper published in Leon County.*[84]

However, if publication pursuant to s. 215.82, F.S., would require publication in more newspapers than would publication pursuant to s. 75.06, F.S., then publication pursuant to s. 75.06, F.S., controls.[85] The currently required publication is dependent upon the geographic reach of the project(s) for which funding through bond issuance is sought.

Effect of Proposed Changes:

The bill leaves validation of turnpike bonds to the discretion of the DBF and limits provisions relating to publication of the required notice.

Section 9 creates subsection (5) of s. 338.227, F.S., to:
- Provide turnpike bonds issued pursuant to that section are not required to be validated pursuant to chapter 75, F.S., notwithstanding s. 215.82, F.S.;
- Provide for validation at the option of the DBF; and
- Require the notice under s. 75.06, F.S., to be published only in Leon County.

Section 15 amends s. 215.82(2), F.S., to strike the reference to s. 338.227, F.S., and add a reference to the language in newly created s. 338.227(5), F.S.

Emergency Work Program Amendments (Section 10)

Present Situation:

The FDOT's Work Program

The FDOT is responsible for developing a five-year plan of transportation projects in partnership with other entities such as communities, metropolitan planning organizations, local governments, other state and federal agencies, modal partners, and regional entities. Each of the FDOT's districts develops a "district work program," which is a five-year listing of transportation projects planned for each fiscal year and submitted to the FDOT's central office for review. The central office then develops a "tentative work program" (TWP) based on the district work programs. The TWP is a future five-year listing of all projects planned for each fiscal year, setting forth all projects by phase to be undertaken during the ensuing fiscal year and planned for the successive four fiscal years. On July 1 of each year, the FDOT adopts the "adopted work program," (AWP) which is the five-year listing of all projects planned for each fiscal year, including the current fiscal year.[86]

The TWPs and AWPs must set out the proposed commitments and planned expenditures for the projects listed and be based on a complete, balanced financial plan.[87] Commitments[88] generally

[84] Emphasis added.
[85] *See* s. 215.82(2), F.S.
[86] *See* s. 339.135, F.S.
[87] Section 339.135(3)(a), F.S.
[88] The FDOT operates on a cash flow-commitment basis. Multi-year transportation projects begin before the total amount of cash is available to fund the entire project. Future revenues are used to pay for a project as actual expenditures occur. The

must be planned so as to deplete the estimated resources for the fiscal year.[89] Budgeting in excess of revenues received from various sources is prohibited.[90] The FDOT may include in each new TWP proposed changes to the projects contained in the previous AWP but is required to minimize changes to the four common fiscal years contained in the previous AWP and the new TWP.[91]

Amending the Adopted Work Program

The AWP may be amended, subject to certain procedures. The FDOT may amend the AWP to transfer fixed capital outlay appropriations for projects within the same appropriations category or between appropriations categories, including the following:

- To delete any project or project phase estimated to cost over $150,000;
- To add a project estimated to cost over $500,000;
- To advance or defer to another fiscal year a right-of-way phase, a construction phase, or a public transportation project phase estimated to cost over $1.5 million, with certain exceptions; or
- To advance or defer to another fiscal year any preliminary engineering phase or design phase estimated to cost over $500,000, with certain exceptions.[92, 93]

If the FDOT proposes any amendment to the AWP described above the FDOT must submit the proposed amendment to the Governor for approval.[94] The FDOT must notify:

- The chairs of the appropriations and transportation committees;
- Each member of the Legislature representing a district affected by the proposed amendment; and
- Each affected metropolitan planning organization (MPO) and unit of local government, if not notified in connection with the 14-day comment period.[95]

Current law prohibits the Governor from approving a proposed amendment until 14 days following the notification to the committee chairs, Legislative members, MPOs, and local governments.[96] If either of the appropriations committee chairs, the Senate President, or the House Speaker objects in writing to a proposed amendment within 14 days following the notification and specifies the reason for the objection, the Governor must disapprove the proposed amendment.[97]

FDOT measures and evaluates anticipated future revenues against total and planned project commitments. *See* the FDOT's *Work Program 101* computer based training available at: http://wbt.dot.state.fl.us/ois/WorkProgram101CBT/index.shtm. (Last visited December 2, 2016.)

[89] Section 339,135(3)(b), F.S.

[90] Section 339.315(3)(c), F.S.

[91] Section 339.315(4)(b)3., F.S.

[92] Section 339.135(7)(c), F.S.

[93] FDOT Districts may loan funds between districts, under specified conditions. Such loans constitute an amendment to the AWP per s. 339.135(7)(b), F.S., and are subject to the same budget amendment threshold amounts contained in s. 339.135(7)(c), F.S. The FDOT is required to index the thresholds to the Consumer Price Index or similar inflation indicators no more frequently than once a year, subject to specified notice and review procedures

[94] If the amendment deletes or defers a capacity project construction phase, affected counties and cities must be given a 14-day comment period prior to the amendment being submitted to the Governor. Section 339.135(7)(d)1., F.S.

[95] Section 339.135(7)(d)2., F.S.

[96] Section 339.135(7)(d)3., F.S.

[97] Section 339.135(7)(d)4., F.S.

Any work program amendment that also requires the transfer of fixed capital outlay[98] appropriations between categories within the FDOT, or the increase of an appropriation category, is subject to the approval of the Legislative Budget Commission (LBC), if not subject to legislation enacted in 2016.[99] The 2016 legislation required LBC approval of any work program amendment in excess of $3 million that also adds a new project, or phase thereof, to the AWP.[100]

Emergency Work Program Amendments

Recognizing that circumstances can arise that would make the above-described processes unworkable, existing law makes provision for emergencies. Notwithstanding the notification and approval requirements described above and the requirement for LBC review of amendments transferring fixed capital outlay appropriations between categories,[101] current law authorizes the FDOT secretary to request AWP amendments when an emergency[102] exists and the emergency relates to the repair or rehabilitation of any state transportation facility. The Governor may grant approval and amend the FDOT's approved budget if a delay due to the notification requirements described above would be detrimental to the interests of the state. The FDOT must immediately notify the committee chairs and the affected Legislative members, MPOs, and local governments, and provide written justification for the emergency action within seven days after approval.[103]

The FDOT notes that this exemption ensures that emergency repairs proceed quickly, protecting the safety and convenience of the traveling public.[104] However, when the 2016 legislation was enacted to require LBC approval of any work program amendment in excess of $3 million that also adds a new project, or phase thereof, to the AWP, no exception from the notification, approval, and LBC-review requirements was granted for emergencies. The FDOT seeks to clarify that emergency work program amendments are also exempt from the LBC approval requirement of the 2016 legislation. In Fiscal Year 2016-2017 so far, the FDOT advises only one work program amendment was submitted for LBC review that, under the proposed revision, would not have been submitted.[105]

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[98] Defined in s. 216.011(1)(p), F.S., to mean the appropriation category used to fund real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility, when appropriated by the Legislature in the fixed capital outlay appropriation category.

[99] Section 339.135(7)(g), F.S.

[100] Section 339.135(7)(h), F.S.

[101] Section 339.135(7)(e), F.S., also expressly notwithstands the provisions of s. 216.772(2), F.S., relating to certain other notice, review, and objection procedures with respect to appropriations, and s. 216.351, F.S., providing that subsequent inconsistent laws supersede that chapter only by express reference to that section,.

[102] Defined by s. 252.34(4), F.S., to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

[103] Current law prohibits amending the AWP for emergency purposes unless the FDOT's comptroller certifies the availability of sufficient funds. Section 339.135(7)(e), F.S.

[104] *See* the FDOT's 2017 Legislative Proposal, *Work Program Amendments-LBC/Emergency Projects*. (On file in the Senate Transportation Committee.)

[105] *See* the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)

Effect of Proposed Changes:

Section 10 amends s. 339.135(7)(e), F.S., relating to emergency amendment of the FDOT's work program, to insert a cross-reference to subsection (h), relating to the 2016 requirement for LBC review and approval of any work program amendment in excess of $3 million that also adds a new project, or phase thereof, to the AWP. This revision results in an exception to LBC review and approval of such amendments in the case of emergencies, under the conditions specified in current law.

Florida Highway Beautification Council Repeal/FDOT Grant Program (Section 11)

Present Situation:

The Council's Role

Section 339.2405, F.S., established the Florida Highway Beautification Council (Council) within the FDOT in 1987. The Council consists of seven members appointed by and serving at the pleasure of the Governor, with each chair selected by the Council members and serving a two-year term. Currently, all appointed members must be residents of this state. Of the seven members, two must be private citizens and one each must be:

- A licensed landscape architect;
- A representative of the Florida Federation of Garden Clubs, Inc.;
- A representative of the Florida Nurserymen and Grower Association;
- An FDOT representative designated by the FDOT secretary; and
- A representative of the Department of Agriculture and Consumer Services.

The Council is required to meet at least semiannually and may prescribe, amend, and repeal bylaws. The Council's duties are to:

- Provide information to local governments and local highway beautification councils about the state highway beautification grants program;
- Accept and review grant requests from local governments;
- Establish rules for evaluating and prioritizing the grant requests;
- Maintain a prioritized list of approved grant requests;
- Assess the feasibility of planting and maintain indigenous wildflowers and plants, instead of sod groundcovers, along the rights-of-way of state roads and highways;
- At the request of the FDOT secretary, review and make recommendations on any other highway beautification matters; and
- Annually submit to the FDOT secretary a proposal recommending the level of grant funding.

Local councils may be created by local governmental entities or by the Legislature. The local government or governments of the area in which the project is located must approve a grant request before its submission to the Council. After receiving recommendations from the Council, the FDOT secretary must award grants to local governmental entities in the order they appear on the Council's prioritized list and in accordance with available funding.[106]

[106] Section 334.044(26), F.S., requires the FDOT to allocate no less than 1.5 percent of the amount contracted for roadway and bridge construction projects for the purchase of plant materials. The FDOT advises that highway beautification grant funds are included in its calculation of the 1.5 percent requirement. *See* the FDOT's response to staff questions. (On file in the Senate Transportation Committee.)

Beautification grants may be requested only for projects to beautify through landscaping roads on the State Highway System. A grant request must identify all costs associated with the project, including sprinkler systems, plant materials, equipment, and labor. Grant funds must provide for the costs of purchase and installation of a sprinkler system and the cost of plant materials and fertilizer. Grant funds may provide for the costs for labor associated with the installation of plantings.

Each local government that receives a grant is responsible for paying any costs for water, sprinkler system maintenance, and landscaped area maintenance in accordance with a maintenance agreement with the FDOT. Except as provided in the grant, each local government is also responsible for paying any costs for labor associated with plant installation. The FDOT is authorized to provide by contract services to maintain such landscaping at a level not to exceed the cost of routine maintenance of an equivalent un-landscaped area.

The FDOT's Role

The FDOT reports that each FDOT District appoints a District Highway Beautification Council Grant Manager (District Manager). The District Manager works with the District Landscape Architect and the State Transportation Landscape Architect (STLA), promoting the grant program and assisting applicants through the grant process. Each District Manager compiles and submits to the STLA a district-wide list of all applications received, and the STLA then compiles a statewide list. After the Council ranks each project, the STLA produces a Ranked Listing of the projects. Grants are awarded in the ranked order until the remaining budget is insufficient to fund the next ranked project.[107]

Recent Grant Funding and Council Expenses

The line items for highway beautification included in the FDOT's budget for the most recent five Fiscal Years is as follows:

Fiscal Year	Line-Item
2012-2013	$1,000,000
2013-2014	$1,000,000
2014-2015	$1,800,000
2015-2016	$1,817,000
2016-2017	$1,800,000[108]

The FDOT is required to provide staff support services to the Council. For Fiscal Years 2012-13 through 2016-17, the FDOT advises it expended $167,500 for administrative costs and travel to support the Council.[109]

[107] *See* the FDOT's 2017 Legislative Proposal, *Repeal of the Florida Highway Beautification Council*. (On file in the Senate Transportation Committee.)
[108] *Id.*
[109] *See* the FDOT's *Estimated Admin and Travel Expense to Administer the Grants*. (On file in the Senate Transportation Committee.)

Effect of Proposed Changes

The bill repeals the Florida Highway Beautification Council and creates the Florida Highway Beautification Grant Program within the FDOT, with the FDOT secretary awarding grants to local governmental entities for beautification of roads on the State Highway System based on the FDOT's prioritized list.

Section 11 amends s. 339.2405, F.S., creating the Grant Program within the FDOT and repealing all of the provisions relating to the Council, its membership, chair selection, meeting frequency, quorum requirements, compensation, and bylaws, etc.

The current Council duties are transferred to the FDOT, with the exception of assessing the feasibility of planting and maintaining indigenous wildflowers and plants, instead of sod groundcovers, using data from other states. The bill removes the required assessment, as it has been accomplished. The FDOT continues its efforts to improve aesthetics and driver safety while lowering maintenance costs through its Wildflower and Natural Areas Program.[110]

Also removed to conform to the repeal of the Council is its authorization to make recommendations on other highway beautification matters and direction to the FDOT secretary to provide staff support services to the Council. Authorization to create local councils remains in place. The FDOT would rank the requests, rather than the Council, and the FDOT secretary would award grants based on the FDOT's prioritized list of approved grant requests, until the remaining budget is insufficient to fund the next ranked project.

South Florida Regional Transportation Authority (SFRTA) Funding and Contracting (Sections 712-14 and 16)

Present Situation:

The SFRTA and Funding

The SFRTA, created in 2003, is an agency of the state established in part II of ch. 343, F.S. The governing body of ten voting members includes:

- One county commissioner each, elected by the county commission from Broward, Miami-Dade, and Palm Beach Counties;
- One citizen who is not a commission member, appointed by each county commission;
- An FDOT district secretary or his designee appointed by the FDOT secretary; and
- Three citizens appointed by the Governor.

Members serve four-year terms, except that the terms of the Governor's appointees must be concurrent.

The SFRTA is authorized to coordinate, develop, and operate a regional transportation system in the tri-county area of Broward, Miami-Dade, and Palm Beach Counties. The SFRTA provides commuter rail service (Tri-Rail) for residents and visitors in the area served. Statutory provisions

[110] *See* the FDOT website for further information on the current program, including links to the referenced report, a history of the program, the FDOT's current wildflower procedure, and other related details available at: http://www.fdot.gov/designsupport/wildflowers/default.shtm. (Last visited March 2, 2017.)

require each of the three counties served to provide no less than $2.67 million annually, dedicated by each governing body by October 1 of each year, which funds may be used for capital, operations, and maintenance.[111] Additionally, current law requires each county to annually fund SFRTA operations in an amount no less than $1.565 million.[112]

Further, if the SFRTA, by December 31, 2015, had not received federal matching funds based on the dedicated $2.67 million in tri-county funding, current law provides that funding is repealed. The SFRTA's 2016 Comprehensive Annual Financial Report reflects that the three counties contributed approximately $1.6 million each towards the SFRTA's operating budget in Fiscal Years 2015 and 2016.[113] Thus, it appears the SFRTA received no federal matching funds, and the counties are no longer required to provide the annual $2.67 million to the SFRTA.

The SFRTA is currently responsible for dispatching, maintenance, and inspection of the South Florida Rail Corridor.[114] Having assumed such responsibility, the FDOT is required to annually transfer to the SFRTA a total of $42.1 million as follows:

- $15 million for SFRTA operations, maintenance, and dispatch; and
- $27.1 million for operating assistance, corridor track maintenance, and contract maintenance for the SFRTA.[115]

According to a Florida Transportation Commission report, the FDOT has agreed to cover 100 percent of annual maintenance costs up to $14.4 million, with shared costs in excess of that amount, pursuant to an Operating Agreement between the FDOT and the SFRTA setting out agreed-upon percentages.[116] The SFRTA's 2016 Comprehensive Annual Financial Report indicates that of the $102,201,506 million in total revenue for 2016, the FDOT contributed $55,260,036 million or 54.1 percent.[117]

The FDOT's Oversight Role

The SFRTA may not commit any funds provided by the FDOT without the FDOT's approval. The FDOT may not unreasonably withhold approval. At least 90 days before advertising any procurement or renewing any existing contract using state funds for payment, the SFRTA must notify the FDOT of the proposed procurement or renewal and the proposed terms. If the FDOT objects in writing within 60 days of receipt of the notice, the SFRTA may not proceed. Failure of the FDOT to object within 60 days is deemed consent.[118] To enable the FDOT's evaluation of the SFRTA's proposed uses of state funds, the SFRTA must annually provide the FDOT with its proposed budget and with any additional documentation or information required by the FDOT.[119]

[111] Section 348.58(1), F.S.
[112] Section 348.58(3), F.S.
[113] *Supra* note 89.
[114] *Transportation Authority Monitoring and Oversight Fiscal Year 2015 Report,* pp. 197-199, available at: http://www.ftc.state.fl.us/documents/reports/TAMO/FY2015Report.pdf. (Last visited March 2, 2017.)
[115] Section 348.58(4)(a)1., F.S.
[116] *Supra* note 86, p. 197.
[117] At p. 25, available at: http://www.sfrta.fl.gov/docs/overview/Fiscal-Year-2016_Comprehensive-Annual-Financial-Report-FINAL.pdf. (Last visited March 2, 2017.)
[118] Section 348.58(4)(c)1., F.S.
[119] Section 348.58(4)(c)2., F.S.

Recent Contracting

According to the SFRTA, services for the operation of Tri-Rail are currently provided through four separate contracts covering train operations, maintenance of equipment, train dispatching, and station maintenance. Those contracts expire in June of this year. The SFRTA made a decision to bundle the four contracts into one and, on September 22, 2016, issued a Request for Proposals (RFP). Eighty percent of the scoring of the proposals was to be based on technical ability to do the work; 20 percent was to be based on price. The RFP cautioned proposers not to condition their prices. Proposals were due by December 16, 2016.[120]

According to the SFRTA, five of the six proposers submitted with their price proposals "extraneous" pages with labels such as "Proposal Exceptions," "Exceptions to RFP," and "Pricing Assumptions."[121] Other examples included pages indicating that their price did not include the cost of certain requirements in the RFP or that the price assumed facts that contradicted the RFP.[122] The SFRTA's procurement director determined five of the six proposers had materially and significantly conditioned their proposals — specifically, their price – and that the proposals were therefore nonresponsive and should be rejected, based on requirements in the RFP.[123]

On January 27, 2017, the SFRTA's governing board approved a Notice of Intent of Contract Award for Request for Proposal 16-010 "Operating Services," reflecting a determination to enter into a contract with an initial seven-year term, plus a three-year renewal option, for a price of $511,418,271.65.[124]

A request for an injunction to block Tri-Rail from awarding the contract was rejected following issuance of a temporary injunction to enable judicial review of allegations of unfair disqualification. The judge in the case ruled that the plaintiff failed to show any entitlement to a preliminary injunction and had not established a likelihood of success on the merits of their case." [125] Four of the five rejected bidders have timely filed a bid protest with the SFRTA, which is currently under review.[126]

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[120] *See* the SFRTA presentation to the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development on February 16, 2017, available at: http://www.flsenate.gov/media/VideoPlayer?EventID=2443575804_2017021204. (Last visited March 2, 2017.)
[121] *Id.* at (52:29).
[122] *Id.* at (53:18).
[123] *Id.* at (51:15).
[124] Available at: http://www.sfrta.fl.gov/docs/Procurement/Posting-Notice-Operating-Services.pdf. (Last visited March 3, 2017.)
[125] *See Transdev Services, Inc., et al., v. South Florida Regional Transportation Authority*, Case No.: 17-000877 CACE(21), Broward County Circuit Court, public copy available at: https://www.browardclerk.org/Web2/WebForms/Document.aspx?CaseID=ODc4NTc2MA%3d%3d-%2fxl4ct%2bcVyo%3d&CaseNumber=CACE17000877&FragmentID=MjM3NTk1MzQ%3d-tV6MANspieA%3d&DtFile=01/17/2017&DocName=Order&PgCnt=22&UserName=&UserType=Anonymous. (Last visited March 24, 2017.)
[126] Telephone conversation with the SFRTA staff, March 24, 2017.

The Florida Single Audit Act/Agreements Funded with Federal or State Assistance

Section 215.97, F.S., creates the Florida Single Audit Act. Among its stated purposes is to establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.

- "State financial assistance" is defined to mean state resources, not including federal financial assistance and state matching on federal programs, provided to a nonstate entity to carry out a state project, including the types of state resources stated in the rules of the Department of Financial Services established in consultation with all state awarding agencies. State financial assistance may be provided directly by state awarding agencies or indirectly by nonstate entities. The term does not include procurement contracts used to buy goods or services from vendors and contracts to operate state-owned and contractor-operated facility.
- "Nonstate entity" means a local government entity, higher education entity, nonprofit organization, or for-profit organization that receives state financial assistance.

Section 215.971, F.S., requires an agreement that provides state financial assistant to a recipient or subrecipient to include all of the following:

- A scope of work that clearly establishes the tasks to be performed;
- A division of the agreement into deliverables that must be received and accepted in writing by the agency before payment. Deliverables must be directly related to the scope of work. The agreement must specify the required minimum level of service to be performed and criteria for evaluating completion of each deliverable;
- Specification of the financial consequences for failure to perform the minimum level of service.
- Specification that a recipient may expend funds only for allowable costs, and that any balance of unobligated funds and any funds paid in excess of the amount to which the recipient is entitled must be refunded to the state agency; and
- Any additional information required by the Florida Single Audit Act.

In 2016, the FDOT's Inspector General engaged in an effort "to determine the nature and extent of SFRTA's expenditures and whether their financial records were in compliance with applicable laws, rules, and regulations."[127] Based on the SFRTA's response, the Inspector General requested a determination from the Department of Financial Services whether appropriations to the SFRTA constitute "state financial assistance."[128] The Inspector General's report found:

> SFRTA, as determined by the Department of Financial Services (DFS), is a Special District and a nonstate entity that is a recipient of state financial

[127] *See Audit Report No. 141-4002*, available at: http://www.fdot.gov/ig/Reports/14I-4002%20Final.pdf. (Last visited March 18, 2017.)
[128] *Audit Report* at 7.

> assistance.[129] We determined the Operating Agreement[130] between SFRTA and the department does not fully comply with mandatory provisions required by Section 215.971, F.S. nor does it contain the procurement provisions outlined in Chapter 287, F.S. We also determined $153 million of state appropriations was omitted from audit coverage in accordance with the Florida Single Audit Act for fiscal years 2010/11 to 2014/15. Additionally, SFRTA did not provide a standard operating budget-to-actual expenditure report based upon the use of each grant or funding source.[131]

Effect of Proposed Changes:

The bill places restrictions on the SFRTA's contracting authority and use of state funds and revises the FDOT's oversight role.

Section 13 amends s. 343.54, F.S., to prohibit the SFRTA from entering into, extending, or renewing any contract or other agreement under that part without the FDOT's prior review and written approval of the SFRTA's proposed expenditures, if such contract or agreement may be funded, in whole or in part, with FDOT-provided funds. The prohibition applies notwithstanding any provision of that part, which contains the SFRTA's authorization to enter into contracts. The SFRTA must obtain the FDOT's approval, under the funding condition specified, to enter into, extend, or renew any contract or other agreement.

Section 14 amends s. 343.48(4)(c)1., F.S., to remove the current statutory language:

- Prohibiting the FDOT from unreasonably withholding its approval of the SFRTA's commitment of FDOT-provided funds;
- Requiring the SFRTA to notify the FDOT of a proposed procurement or renewal before advertising any procurement or renewing any existing contract that will rely on state funds;
- Requiring the FDOT to object in writing and, if timely, prohibiting the SFRTA from proceeding with the procurement or renewal;
- Providing that the FDOT's failure to timely object constitutes consent; and
- Providing no-impairment-of-contract language for contracts existing as of June 30, 2012.

This section replaces the notice and objection process with language deeming funds provided to the authority by the FDOT under that section to be state financial assistance provided to a

[129] The DFS determined the SFRTA had for nine years submitted financial audit reports per s. 28.39, F.S., as a special district; that a special district as defined by statute is a unit of government created for a special purpose by a special act with jurisdiction to operate within a limited geographic boundary; that the SFRTA was created by the South Florida Regional Transportation Authority Act for the special purpose of operating and managing a transit system in Broward, Miami-Dade and Palm Beach Counties; and that the law limits operations to those counties. The DFS also noted the SFRTA is a state project (a state program that provides state financial assistance to a nonstate organization) that must be assigned a Catalog of State Financial Assistance number and, finally, since state law created the SFRTA to carry out a state project, the SFRTA is a recipient of state financial assistance. *Audit Report,* Appendix J.

[130] The report notes a June 2013 operating agreement between the FDOT and the SFRTA for continuing SFRC operating rights for a 14-year period that included SFRTA's agreement to conduct all activities in accordance with applicable federal and state laws and regulations and the operating rules, policies, and procedures adopted pursuant to such laws and regulations. *Id.* at 5.

[131] *Audit Report* at 1.

nonstate entity to carry out a state project subject to the provisions of ss. 215.97 and 215.971, F.S. The FDOT is directed to provide the funds in accordance with the terms of a written agreement to be entered into between the SFRTA and the FDOT. The agreement must provide for FDOT review, approval, and audit of the SFRTA's expenditure of such funds and must include such other provisions as are required by applicable law. The FDOT is expressly authorized to advance the SFRTA one-fourth of the total funding provided under that section for a state fiscal year at the beginning of each state fiscal year. Thereafter, the bill requires monthly payments over the fiscal year on a reimbursement basis as supported by invoices and such additional documentation and information as the FDOT may reasonably require, and a reconciliation of the advance against remaining invoices in the last quarter of the fiscal year.

This section of the bill also modifies the SFRTA's existing obligation to provide the FDOT with its proposed budget and any additional documentation or information required by the FDOT for its evaluation of SFRTA-proposed uses of state funds by requiring the SFRTA to *promptly* provide such documentation or information.
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Section 12 amends s. 343.52, F.S., to define "department" within Part II of ch. 343, F.S. to mean the Department of Transportation.

Section 16 of the bill amends s. 343.53, F.S., revising a cross-reference to conform to changes made in the act.

Transportation Disadvantaged Services/Transportation Network Companies (Section 17)

Present Situation:

The Legislature created the Transportation Disadvantaged (TD) Program in Part I of ch. 427, F.S., in 1979.[132] The TD Program coordinates a network of local and state programs providing transportation services for elderly, disabled, and low-income citizens. In 1989, the Legislature created the Commission for the Transportation Disadvantaged (commission) as an independent entity within the Florida Department of Transportation.[133] The purpose of the commission is to accomplish the coordination of transportation services provided to the transportation disadvantaged,[134] with the goal of such coordination to assure the cost-effective provision of transportation by qualified community transportation coordinators[135] or transportation operators.[136] The commission describes the program as "a shared-ride service which, depending

[132] 79-180, L.O.F.
[133] 89-376, L.O.F.
[134] A "transportation disadvantaged person" is a person who because of physical or mental disability, income status, or age is unable to transport himself or herself or to purchase transportation and is, therefore, dependent on others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk as defined in s. 411.202, F.S.Section 427.011(1), F.S.
[135] Section 427.011(5), F.S.
[136] A "transportation operator" is one or more public, private for-profit, or private nonprofit entities engaged by the community transportation coordinator to provide service to transportation disadvantaged persons pursuant to a coordinated system service plan. Section 427.011(6), F.S.

on location, may be provided using the fixed route transit or paratransit (door-to-door) service."[137]

Section 427.011(9), F.S., defines "paratransit" to mean those elements of public transit that provide service between specific origins and destinations selected by the individual user with such service being provided at a time agreed upon by the user and provider of the service. That section also specifies that paratransit services are provided by taxis, limousines, "dial-a-ride," buses, and other demand-responsive operations characterized by their nonscheduled, nonfixed route nature. Paratransit service has its own challenges, however, such as waiting long periods of time for a ride home after a doctor's visit or problems getting to a fixed route stop.

Some communities are employing TNCs, such as Uber, Lyft, and SideCar, to improve mobility for transportation disadvantaged persons. For example, the Massachusetts Bay Transportation Authority partnered with Uber and Lyft to provide paratransit services.[138] Here in Florida, the Pinellas Suncoast Transit Authority (PSTA) recently expanded a small pilot project to the entire county. Branded as Direct Connect, the program is designed to give low-cost rides to designated bus stops using Uber, United Taxi, and Lyft.[139] However, current state law does not expressly include TNCs as a provider of transportation disadvantaged services.

Effect of Proposed Changes:

Section 17 amends s. 427.011, F.S., to re-order the definitions alphabetically, re-numbering current subsection (9) as subsection (7), and includes TNCs as a provider of paratransit service, thereby allowing TNCs to provide transportation disadvantaged services.

Federal Pilot Program Enrollment

Present Situation:

Section 334.044, F.S., sets out a number of the FDOT's powers and duties. Among those are the FDOT's power and duty to:

- Conduct research studies and collect data necessary for the improvement of the state transportation system;
- Conduct research and demonstration projects relative to innovative transportation technologies; and
- Identify, obtain, and administer all federal funds available to the FDOT for all transportation purposes.

Effect of Proposed Changes:

Section 18 of the bill creates an unspecified section of Florida law authorizing the Secretary of Transportation to enroll the State of Florida in any federal pilot program or project for the

[137]*See* the Commission's website available at: http://www.fdot.gov/ctd/communitytransystem.htm. (Last visited March 27, 2017.)
[138]*See Uber, Lyft partner with transportation authority to offer paratransit customers service in Boston*, available at: https://www.washingtonpost.com/news/dr-gridlock/wp/2016/09/16/uber-lyft-partner-with-city-to-offer-paratransit-customers-on-demand-service-in-boston/?utm_term=.0a9f1dca38bb. (Last visited April 13, 2017.
[139]*See PSTA Expands Partnership with Uber, Lyft Across Pinellas County,* available at: https://patch.com/florida/stpete/psta-expands-partnership-uber-lyft-across-pinellas-county. (Last visited April 14, 2017.)

collection and study of data for the review of federal or state roadway safety, infrastructure sustainability, congestion mitigation, transportation system efficiency, autonomous vehicle technology, or capacity challenges.

While research reveals no provision of law expressly authorizing the FDOT to enroll the state in any federal pilot program or project, the FDOT's existing powers and duties appear to grant sufficient authority for the FDOT to enroll the state in a federal pilot program or project relating to the collection and study of data for review of the identified subject matters.

Section 19 provides the act take effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Article VII, s. 18(d) of the Florida Constitution provides laws adopted to require funding of pension benefits existing on the effective date of this section, criminal laws, election laws, the general appropriations act, special appropriations acts, laws reauthorizing but not expanding then-existing statutory authority, laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the requirements of this section.

An exemption from the mandates provision may apply if the expected fiscal impact on municipalities/counties is less than $2 million. Because the fiscal impact is anticipated to be less than $2 million, the bill appears to be exempt from the mandate requirements.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions relating to highway memorial markers and incorporation of emblems of belief may be subject to challenge under the First Amendment of the U.S. Constitution.[140]If such a legal challenge is made, case law does not provide clear direction as to the legal standard to be used as different "tests" of constitutionality have been applied in establishment clause cases based on various fact patterns leading to an inconsistency in results.[141]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 2: The trucking industry may realize an insignificant positive fiscal impact resulting from the additional weight allowance for natural gas vehicles due to potentially fewer overweight citations.

Section 3: Riders in autonomous vehicles used by TNCs to provide transportation may benefit from the bill's required insurance coverage. The insurance industry may benefit from increased sales.

Section 7: Applicants requesting memorial markers incorporating emblems of belief may be required to pay the fee to be set by the FDOT to offset production costs.
Section 8: The FDOT notes an indeterminate positive fiscal impact to the extent a private sector company is awarded a fast response contract and is not required to obtain a surety bond.[142]

C. Government Sector Impact:

Section 2: The FDOT may realize a loss of revenues relating to fewer overweight citations being written. This revenue loss may be offset to an extent by reduced regulatory costs. A potential withholding of federal funds is avoided.

Section 6: The FDOT will incur additional administrative expenses associated with developing the federally required bridge inspection policies and criteria, seeking FHWA approval, and revising relevant policies and procedures, which expenses are expected to be absorbed within existing resources. The FDOT expects cost savings to the extent the FHWA approves bridges for extended inspection frequencies. The FDOT estimates

[140] Congress shall make no law respecting an establishment of religion…." U.S. Const. amend. I.
[141] *Utah Highway Patrol Association v. American Atheists, Inc.*, decided October 31, 2011, available at: https://www.supremecourt.gov/opinions/11pdf/10-1276.pdf. (Last visited April 5, 2017.)
[142] *See* the FDOT's 2017 Legislative Proposal, *Rapid Response Contracts – Price Cap Increase*. (On file in the Senate Transportation Committee.)

approximately $500,000 in inspection services could be redirected to bridge repair, rehabilitation, and/or replacement.[143]

Section 7: The FDOT may experience administrative expenses associated with the memorial marker program, offset by the authorized fee for markers incorporating emblems of belief, in an indeterminate amount.

Section 9: The DBF may avoid some costs if it is not required to validate turnpike revenue bonds.

Section 11: Based on costs for Fiscal Years 2012-13 through 2016-17, the FDOT is expected to realize a positive fiscal impact of approximately $33,400 annually resulting from repeal of the Florida Highway Beautification Council, due to removal of the FDOT's duty to provide for administrative costs and travel to support the Council. The FDOT will absorb administrative expenses associated with revising Rule Chapter 14-40, F.A.C., and implementing the grant program, within existing resources.

Sections 13 and 14: The FDOT and the SFRTA may incur additional administrative expenses associated with the FDOT's review, written approval, and audit of the SFRTA's proposed expenditures using any funding provided to the SFRTA under s. 343.58(4), F.S., as well as administrative expenses associated with the requires reimbursement and reconciliation process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 316.545, 335.074, 337.11, 338.227, 339.135, 339.2405, 343.52, 343.54, 343.58, 215.82, and 343.53.

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 committee substitute:

- Directs the FDOT, in consultation with the Department of Highway Safety and Motor Vehicles (DHSMV), to develop a Florida Smart City Challenge grant program;

[143] *See* the FDOT's 2017 Legislative Proposal, *Bridge Inspection Frequency*. (On file in the Senate Transportation Committee.)

- Revises autonomous vehicle alert system requirements, consistent with current law, to clarify that an autonomous vehicle may operate in autonomous mode without a person physically present in the vehicle;
- Directs the FDOT to establish a process for applications for placement of roadside memorial markers at or near the location of traffic-related fatalities on the State Highway System to raise public awareness and remind motorists to drive safely.
- Applies certain insurance coverage requirements, should legislation addressing insurance for transportation network companies (TNCs) become law, to autonomous vehicles used by TNCs to provide transportation, regardless of whether a human operator is physically present in the vehicle when the ride occurs;
- Removes the provisions requiring the SFRTA to terminate the Operating Services contract and:
  - Deems funds provided by the FDOT to the SFRTA to be state financial assistance subject to specified accountability requirements;
  - Requires the FDOT to provide funds to the SFRTA in accordance with a written agreement containing certain provisions;
  - Authorizes the FDOT to advance funds to the SFRTA at the start of each fiscal year, with monthly payments for maintenance and dispatch on the South Florida Rail Corridor over the fiscal year on a reimbursement basis;
- Expressly includes transportation network companies (TNCs) in the list of providers of services for the transportation disadvantaged; and
- Authorizes the FDOT Secretary to enroll the state in any federal pilot program or project for the collection and study of specified types of transportation-related data.

CS by Transportation March 28, 2017:
A technical amendment to the original bill was adopted to clarify that the 2,000-pound weight allowance for natural gas-powered trucks is in addition to the 500-pound weight allowance for idle reduction technology.

B. Amendments:

None.

By the Committee on Transportation; and Senators Gainer and Rouson

596-03007-17 20171118c1

A bill to be entitled

An act relating to transportation; amending s. 316.545, F.S.; providing for the calculation of fines for unlawful weight and load for a vehicle fueled by natural gas; requiring the vehicle operator to present a certain written certification upon request by a weight inspector or law enforcement officer; prescribing a maximum actual gross vehicle weight for vehicles fueled by natural gas; providing applicability; amending s. 335.074, F.S.; requiring bridges on public transportation facilities to be inspected for certain purposes at regular intervals as required by the Federal Highway Administration; amending s. 337.11, F.S.; increasing the allowable amount for contracts for construction and maintenance which the Department of Transportation may enter into, in certain circumstances, without advertising and receiving competitive bids; amending s. 338.227, F.S.; providing that certain bonds are not required to be validated but may be validated at the option of the Division of Bond Finance; providing filing, notice, and service requirements for complaints and circuit court orders concerning such validation; amending s. 339.135, F.S.; providing an additional exception related to the amendment of adopted work programs when an emergency exists; amending s. 339.2405, F.S.; replacing the Florida Highway Beautification Council within the department with the Florida Highway Beautification Grant Program; providing the purpose of

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the program; providing duties of the department, including the establishment of rules related to grant requests; conforming provisions to changes made by the act; amending s. 343.52, F.S.; defining the term "department"; amending s. 343.54, F.S.; prohibiting the South Florida Regional Transportation Authority from entering into, extending, or renewing certain contracts or other agreements without the department's prior review and written approval if such contracts or agreements may be funded with funds provided by the department; amending s. 343.58, F.S.; prohibiting specified funds provided to the authority by the department from being committed by the authority without the prior review and written approval by the department of the authority's expenditures; deleting requirements relating to notification by the authority to the department of a proposed procurement or of a renewal of any existing contract that will rely on state funds for payment; requiring the authority to promptly provide the department any documentation or information, in addition to the proposed annual budget, which is required by the department for its evaluation of the proposed uses of state funds; prohibiting certain funding from being provided to the authority by the department until the authority terminates a Notice of Intent of Contract Award for a specified request for proposal; requiring the authority, before entering into a new contract for the services that were the subject of such request for

proposal, to obtain the department's written approval of all terms and conditions of the new procurement and contract for such services; amending s. 215.82, F.S.; conforming a provision to changes made by the act; amending s. 343.53, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present paragraphs (c) and (d) of subsection (3) of section 316.545, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to that subsection, to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(3)

(c)1. For a vehicle fueled by natural gas, the fine is calculated by reducing the actual gross vehicle weight by the certified weight difference between the natural gas tank and fueling system and a comparable diesel tank and fueling system. Upon the request of a weight inspector or a law enforcement officer, the vehicle operator shall present a written certification that identifies the weight of the natural gas tank and fueling system and the difference in weight of a comparable diesel tank and fueling system. The written certification must originate from the vehicle manufacturer or the installer of the natural gas tank and fueling system.

2. The actual gross vehicle weight for vehicles fueled by natural gas may not exceed 82,000 pounds, excluding the weight

allowed for idle-reduction technology under paragraph (b).

3. This paragraph does not apply to vehicles described in s. 316.535(6).

Section 2. Subsection (2) of section 335.074, Florida Statutes, is amended to read:

335.074 Safety inspection of bridges.—

(2) At regular intervals as required by the Federal Highway Administration ~~not to exceed 2 years~~, each bridge on a public transportation facility shall be inspected for structural soundness and safety for the passage of traffic on such bridge. The thoroughness with which bridges are to be inspected shall depend on such factors as age, traffic characteristics, state of maintenance, and known deficiencies. The governmental entity having maintenance responsibility for any such bridge shall be responsible for having inspections performed and reports prepared in accordance with the provisions contained herein.

Section 3. Paragraph (c) of subsection (6) of section 337.11, Florida Statutes, is amended to read:

337.11 Contracting authority of department; bids; emergency repairs, supplemental agreements, and change orders; combined design and construction contracts; progress payments; records; requirements of vehicle registration.—

(6)

(c) When the department determines that it is in the best interest of the public for reasons of public concern, economy, improved operations, or safety, and only for contracts for construction and maintenance which do not exceed $250,000 when circumstances dictate rapid completion of the work, the department may~~, up to the amount of $120,000,~~ enter into

contracts ~~for construction and maintenance~~ without advertising and receiving competitive bids. The department may enter into such contracts only upon a determination that the work is necessary for one of the following reasons:

1. To ensure timely completion of projects or avoidance of undue delay for other projects;

2. To accomplish minor repairs or construction and maintenance activities for which time is of the essence and for which significant cost savings would occur; or

3. To accomplish nonemergency work necessary to ensure avoidance of adverse conditions that affect the safe and efficient flow of traffic.

The department shall make a good faith effort to obtain two or more quotes, if available, from qualified contractors before entering into any contract. The department shall give consideration to disadvantaged business enterprise participation. However, when the work exists within the limits of an existing contract, the department shall make a good faith effort to negotiate and enter into a contract with the prime contractor on the existing contract.

Section 4. Subsection (5) is added to section 338.227, Florida Statutes, to read:

338.227 Turnpike revenue bonds.—

(5) Notwithstanding s. 215.82, bonds issued pursuant to this section are not required to be validated pursuant to chapter 75 but may be validated at the option of the Division of Bond Finance. Any complaint about such validation must be filed in the circuit court of the county in which the seat of state

government is situated, and the clerk shall publish the notice as required by s. 75.06 only in the county in which the complaint is filed. The complaint and order of the circuit court must be served on the state attorney of the circuit in which the action is pending.

Section 5. Paragraph (e) of subsection (7) of section 339.135, Florida Statutes, is amended to read:

339.135 Work program; legislative budget request; definitions; preparation, adoption, execution, and amendment.—

(7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—

(e) Notwithstanding paragraphs (d), ~~and~~ (g), and (h) and ss. 216.177(2) and 216.351, the secretary may request the Executive Office of the Governor to amend the adopted work program when an emergency exists, as defined in s. 252.34, and the emergency relates to the repair or rehabilitation of any state transportation facility. The Executive Office of the Governor may approve the amendment to the adopted work program and amend that portion of the department's approved budget if a delay incident to the notification requirements in paragraph (d) would be detrimental to the interests of the state. However, the department shall immediately notify the parties specified in paragraph (d) and provide such parties written justification for the emergency action within 7 days after approval by the Executive Office of the Governor of the amendment to the adopted work program and the department's budget. The adopted work program may not be amended under this subsection without certification by the comptroller of the department that there are sufficient funds available pursuant to the 36-month cash forecast and applicable statutes.

Section 6. Section 339.2405, Florida Statutes, is amended to read:

339.2405 Florida Highway Beautification Grant Program ~~Council~~.—

(1) There is created within the Department of Transportation the Florida Highway Beautification Grant Program for the purpose of awarding grants to local governmental entities for beautification of roads on the State Highway System as provided in subsections (3) and (4). The department shall ~~Council. It shall consist of seven members appointed by the Governor. All appointed members must be residents of this state. One member must be a licensed landscape architect, one member must be a representative of the Florida Federation of Garden Clubs, Inc., one member must be a representative of the Florida Nurserymen and Growers Association, one member must be a representative of the department as designated by the head of the department, one member must be a representative of the Department of Agriculture and Consumer Services, and two members must be private citizens. The members of the council shall serve at the pleasure of the Governor.~~

~~(2) Each chair shall be selected by the council members and shall serve a 2-year term.~~

~~(3) The council shall meet no less than semiannually at the call of the chair or, in the chair's absence or incapacity, at the call of the head of the department. Four members shall constitute a quorum for the purpose of exercising all of the powers of the council. A vote of the majority of the members present shall be sufficient for all actions of the council.~~

~~(4) The council members shall serve without pay but shall~~

~~be entitled to per diem and travel expenses pursuant to s. 112.061.~~

~~(5) A member of the council may not participate in any discussion or decision to recommend grants to any qualified local government with which the member is associated as a member of the governing body or as an employee or with which the member has entered into a contractual arrangement.~~

~~(6) The council may prescribe, amend, and repeal bylaws governing the manner in which the business of the council is conducted.~~

~~(7)(a) The duties of the council shall be to~~:

(a) ~~1.~~ Provide information to local governments and local highway beautification councils regarding the state highway beautification grants program.

(b) ~~2.~~ Accept grant requests from local governments.

(c) ~~3.~~ Review grant requests for compliance with department ~~council~~ rules.

(d) ~~4.~~ Establish rules for evaluating and prioritizing the grant requests. The rules must include, but are not limited to, an examination of each grant's aesthetic value, cost-effectiveness, level of local support, feasibility of installation and maintenance, and compliance with state and federal regulations. Rules adopted by the department ~~council~~ which it uses to evaluate grant applications must take into consideration the contributions made by the highway beautification project in preventing litter.

(e) ~~5.~~ Maintain a prioritized list of approved grant requests. The list must include recommended funding levels for each request and, if staged implementation is appropriate,

funding requirements for each stage shall be provided.

~~6. Assess the feasibility of planting and maintaining indigenous wildflowers and plants, instead of sod groundcovers, along the rights-of-way of state roads and highways. In making such assessment, the council shall utilize data from other states which include indigenous wildflower and plant species in their highway vegetative management systems.~~

~~(b) The council may, at the request of the head of the department, review and make recommendations on any other highway beautification matters relating to the State Highway System.~~

~~(8) The head of the department shall provide from existing personnel such staff support services to the council as are necessary to enable the council to fulfill its duties and responsibilities.~~

(2) ~~(9)~~ Local highway beautification councils may be created by local governmental entities or by the Legislature. Prior to being submitted to the department ~~council~~, a grant request must be approved by the local government or governments of the area in which the project is located.

(3) ~~(10)~~ The head of the department~~, after receiving recommendations from the council,~~ shall award grants to local governmental entities that have submitted grant requests for beautification of roads on the State Highway System and which requests are on the ~~council's~~ approved list. The grants shall be awarded in the order they appear on the ~~council's~~ prioritized list and in accordance with available funding.

(4) ~~(11)~~ State highway beautification grants may be requested only for projects to beautify through landscaping roads on the State Highway System. The grant request shall

identify all costs associated with the project, including sprinkler systems, plant materials, equipment, and labor. A grant shall provide for the costs of purchase and installation of a sprinkler system, the cost of plant materials and fertilizer, and may provide for the costs for labor associated with the installation of the plantings. Each local government that receives a grant is ~~shall be~~ responsible for any costs for water, for the maintenance of the sprinkler system, for the maintenance of the landscaped areas in accordance with a maintenance agreement with the department, and, except as otherwise provided in the grant, for any costs for labor associated with the installation of the plantings. The department may provide, by contract, services to maintain such landscaping at a level not to exceed the cost of routine maintenance of an equivalent unlandscaped area.

~~(12) The council shall annually submit to the head of the Department of Transportation a proposal recommending the level of grant funding.~~

Section 7. Section 343.52, Florida Statutes, is reordered and amended to read:

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

(2) ~~(1)~~ "Authority" means the South Florida Regional Transportation Authority.

(3) ~~(2)~~ "Board" means the governing body of the authority.

(4) "Department" means the Department of Transportation.

(1) ~~(3)~~ "Area served" means Miami-Dade, Broward, and Palm Beach Counties. However, this area may be expanded by mutual consent of the authority and the board of county commissioners of Monroe County. The authority may not expand into any

additional counties without the department's prior written approval.

(8) ~~(4)~~ "Transit system" means a system used for the transportation of people and goods by means of, without limitation, a street railway, an elevated railway having a fixed guideway, a commuter railroad, a subway, motor vehicles, or motor buses, and includes a complete system of tracks, stations, and rolling stock necessary to effectuate passenger service to or from the surrounding regional municipalities.

(7) ~~(5)~~ "Transit facilities" means property, avenues of access, equipment, or buildings built and installed in Miami-Dade, Broward, and Palm Beach Counties which are required to support a transit system.

(6) ~~(6)~~ "Member" means the individuals constituting the board.

(5) ~~(7)~~ "Feeder transit services" means a transit system that transports passengers to or from stations within or across counties.

Section 8. Present subsections (4) and (5) of section 343.54, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

343.54 Powers and duties.—

(4) Notwithstanding any other provision of this part, the authority may not enter into, extend, or renew any contract or other agreement under this part without the department's prior review and written approval of the authority's proposed expenditures if such contract or agreement may be funded, in whole or in part, with funds provided by the department.

Section 9. Paragraph (c) of subsection (4) of section 343.58, Florida Statutes, is amended, and paragraph (e) is added to that subsection, to read:

343.58 County funding for the South Florida Regional Transportation Authority.—

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, until as provided in paragraph (d), the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2.

(c)1. Funds provided to the authority by the department under this subsection may not be committed by the authority without the prior review and written approval by ~~of~~ the department of the authority's expenditures~~, which may not be unreasonably withheld. At least 90 days before advertising any procurement or renewing any existing contract that will rely on state funds for payment, the authority shall notify the department of the proposed procurement or renewal and the proposed terms thereof. If the department, within 60 days after receipt of notice, objects in writing to the proposed procurement or renewal, specifying its reasons for objection, the authority may not proceed with the proposed procurement or renewal. Failure of the department to object in writing within 60 days after notice shall be deemed consent. This requirement does not impair or cause the authority to cancel contracts that exist as of June 30, 2012~~.

2. To enable the department to evaluate the authority's proposed uses of state funds, the authority shall annually

provide the department with its proposed budget for the following authority fiscal year and shall promptly provide the department with any additional documentation or information required by the department for its evaluation of the proposed uses of the state funds.

(e) Funding may not be provided to the authority by the department under this subsection until the authority withdraws, cancels, or otherwise terminates the authority's Notice of Intent of Contract Award for Request for Proposal 16-010 "Operating Services," approved by the authority's board on January 27, 2017. Before entering into a new contract for the services that were the subject of the Request for Proposal 16-010, the authority must obtain the department's written approval of all terms and conditions of a new procurement and contract for the services that were the subject of such request for proposal to ensure that the authority has sufficient revenues to fund the contract.

Section 10. Subsection (2) of section 215.82, Florida Statutes, is amended to read:

215.82 Validation; when required.—

(2) Any bonds issued pursuant to this act which are validated shall be validated in the manner provided by chapter 75. In actions to validate bonds to be issued in the name of the State Board of Education under s. 9(a) and (d), Art. XII of the State Constitution and bonds to be issued pursuant to chapter 259, the Land Conservation Program, the complaint shall be filed in the circuit court of the county where the seat of state government is situated, the notice required to be published by s. 75.06 shall be published only in the county where the

complaint is filed, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending. In any action to validate bonds issued pursuant to s. 1010.62 or issued pursuant to s. 9(a)(1), Art. XII of the State Constitution or issued pursuant to s. 215.605 ~~or s. 338.227~~, the complaint shall be filed in the circuit court of the county where the seat of state government is situated, the notice required to be published by s. 75.06 shall be published in a newspaper of general circulation in the county where the complaint is filed and in two other newspapers of general circulation in the state, and the complaint and order of the circuit court shall be served only on the state attorney of the circuit in which the action is pending; provided, however, that if publication of notice pursuant to this section would require publication in more newspapers than would publication pursuant to s. 75.06, such publication shall be made pursuant to s. 75.06.

Section 11. Paragraph (d) of subsection (2) of section 343.53, Florida Statutes, is amended to read:

343.53 South Florida Regional Transportation Authority.—

(2) The governing board of the authority shall consist of 10 voting members, as follows:

(d) If the authority's service area is expanded pursuant to s. 343.54(6) ~~s. 343.54(5)~~, the county containing the new service area shall have two members appointed to the board as follows:

1. The county commission of the county shall elect a commissioner as that commission's representative on the board. The commissioner must be a member of the county commission when elected and for the full extent of his or her term.

2. The Governor shall appoint a citizen member to the board who is not a member of the county commission but who is a resident and a qualified elector of that county.

Section 12. This act shall take effect July 1, 2017.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Commerce and Tourism, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR GEORGE B. GAINER
2nd District

April 18, 2017

Re: SB 1118

Dear Chair Latvala,

I am respectfully requesting Senate Bill 1118, a bill related to Transportation, be placed on the agenda for your committee on Appropriations.

I appreciate your consideration of this bill and I look forward to working with you and the Appropriations committee. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

Senator George Gainer
District 2

Cc. Mike Hansen, Tim Sadberry, John Shettle, Joe McVaney, Alicia Weiss, Carlecia Collins, Drew Aldikacti, Rich Reidy, and Tracy Caddell

REPLY TO:
❒ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

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)

4/25/17
Meeting Date

1118
Bill Number (if applicable)

408222
Amendment Barcode (if applicable)

Topic Transportation funding

Name Mayor Bob Buckhorn

Job Title Mayor

Address 306 E Jackson St
Street

Tampa FL 33602
City *State* *Zip*

Phone 8132748251

Email bob.buckhorn@tampagov.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Tampa

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)

4/25/2017
Meeting Date

SB 1118
Bill Number (if applicable)

408222
Amendment Barcode (if applicable)

Topic Transportation Funding

Name Buddy Dyer

Job Title Mayor of Orlando

Address 400 S. Orange Ave
Street

Phone 407 242-2221

Orlando FL 32081
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Orlando

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)

4/25/17
Meeting Date

1118
Bill Number (if applicable)

788242
Amendment Barcode (if applicable)

Topic GARCON POINT BRIDGE / SANTA ROSA BRIDGE AUTHORITY

Name ROB WILLIAMSON

Job Title COMMISSIONER SANTA ROSA COUNTY - CHAIR

Address PO BOX 6118
Street

Phone 850 529-2525

NAVARRE FL 32566
City *State* *Zip*

Email ROBWILL

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SANTA ROSA 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)

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

1118
Bill Number (if applicable)

463056
Amendment Barcode (if applicable)

Topic TRANSPORTATION

Name CHRISTOPHER EMMANUEL

Job Title POLICY DIRECTOR

Address 136 S. BRONOUGH
Street

TLH FL 32301
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA CHAMBER OF COMMERCE

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)

4/25/2017
Meeting Date

SB 118
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Transportation

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 681-0024

Email jorge@flapartners.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Herzog Transit 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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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 25th, 2017
Meeting Date

SB 1118
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Transportation

Name Jack Cory

Job Title Lobbyist

Address 130 E. Park Ave.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone

Email jackcory@paconsultants.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Stiles

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)

4/25/2017
Meeting Date

Topic _____ Bill Number 1118 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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.

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

S-001 (10/20/11)

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 814
INTRODUCER:	Appropriations Committee and Senator Broxson
SUBJECT:	Florida Life and Health Insurance Guaranty Association
DATE:	April 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Sanders	Betta	AGG	**Recommend: Favorable**
3.	Sanders/Johnson	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 814 revises coverage provisions relating to the Florida Life and Health Insurance Guaranty Association (association). In 1979, the Legislature created the association to protect policyholders against failure in the performance of contractual obligations under life and health insurance policies and annuity contracts due to the impairment or insolvency of the member insurer that issued the policies or contracts.

The bill provides the limit on coverage for specified health insurance policies increases from $300,000 to $500,000 for any one person, effective January 1, 2020. The bill expands the association's scope of coverage to include annuities issued by an insurer pursuant to an individual retirement annuity and annuities issued by an insurer and held by a third party custodian or trustee pursuant to an individual retirement account.

The bill does not affect state revenues or expenditures.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Insurer Insolvency

States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. Solvency regulations are designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. In Florida, the Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers and other risk-bearing entities.[1] The OIR is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. The Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.[2]

Chapter 631, F.S., relating to insurer insolvency and guaranty payment, governs the receivership process for insurance companies in Florida.[3] Federal law specifies that insurance companies cannot file for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the state. Florida has five insurance guaranty funds that protect policyholders of liquidated insurers from financial losses and delays in claim payment and settlement, up to limits provided by law.[4] A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[5] to policyholders. As a condition of transacting business in Florida, all insurers are required to participate in a guaranty association.

Florida Life and Health Insurance Guaranty Association

Part III of ch. 631, F.S., governs the powers and duties of the Florida Life and Health Insurance Guaranty Association (association).[6] All insurers licensed to write life and health insurance

[1] Section 20.121(3), F.S.
[2] Typically, insurers are placed into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.
[3] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011- 1012.
[4] The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are impaired or insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan assists members of insolvent health maintenance organizations, and the Florida Workers' Compensation Insurance Guaranty Association protects policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property insurance, automobile insurance, and liability insurance, among others.
[5] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired portion of the policy.
[6] *Florida Life and Health Insurance Guaranty Association Act*. s. 1, ch. 79-189, Laws of Fla.

policies or annuities (with exceptions) in Florida are required, as a condition of doing business in the state, to be members of the association.[7] The board of directors is composed of nine member insurers.[8]

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, the association automatically becomes liable for the policy obligations that the liquidated insurer owed to its Florida policyholders.[9] The association services the policies, collects premiums and pays valid claims under the policies. The rights of the association under the policies are those that applied to the insurer prior to liquidation. The association may cancel the policy if the insurer could have done so, but generally, the association continues the policies until the association can transfer or substitute the policies to a new, stable insurer with approval of the OIR.[10]

The National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) is a voluntary association comprised of the life and health insurance guaranty associations of all 50 states and the District of Columbia. The NOLHGA assembles a task force of guaranty association officials to address situations where insurers licensed in multiple states are facing insolvency or are declared insolvent. This task force analyzes the companies' policies, ensures that covered claims are paid, and arranges for the transfer of covered policies to another insurer (when possible). This allows the receiver and potential assuming carriers to deal with a single point of contact and contracting instead of having to engage in multiple discussions, negotiations, and contracts with a variety of different associations. [11] The NOLGHA allocates these expenses[12] to affected guaranty associations for payment.[13]

Covered Policies

Generally, direct life insurance policies, health insurance policies, individual and allocated[14] annuity contracts, and supplemental contracts[15] issued by member insurers are covered. A policy must meet coverage requirements, and association payments are limited for any one person as follows:

- Life Insurance Death Benefit: $300,000 per insured life.
- Life Insurance Cash Surrender: $100,000 per insured life.
- Health Insurance Claims: $300,000 per insured life.
- Annuity Cash Surrender: $250,000 for deferred annuity contracts per contract owner.

[7] Section 631.713(3), F.S.
[8] Section 631.716(1), F.S.
[9] Generally, FLAHIGA covers only policyholders and certificate holders who were Florida residents on the date that a member insurer is declared insolvent and liquidated with some exceptions. (s. 631.713(2), F.S.).
[10] See http://www.flahiga.org/aboutus.cfm (last viewed Mar. 10, 2017)
[11] See https://www.nolhga.com/resource/file/costs/Report16.pdf (last viewed Mar. 12, 2017).
[12] https://www.nolhga.com/aboutnolhga/main.cfm/location/whatisnolhga (last viewed Mar. 12, 2017).
[13] Section 631.721, F.S.
[14] Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.
[15] Section 631.713(1), F.S.

- Annuity in Benefit: $300,000 per contract owner.[16]

In addition, s. 631.713(3), F.S., excludes all of the following from coverage by the association:

- any portion or part of a variable life insurance contract or a variable annuity contract that is not guaranteed by a licensed insurer;
- any portion or part of any policy or contract under which the risk is borne by the policyholder;
- any policy or contract or part thereof assumed by the failed insurer under a contract of reinsurance, unless assumption certificates were issued;
- fraternal benefit society products;
- health maintenance insurance;
- dental service plan insurance;
- pharmaceutical service plan insurance;
- optometric service plan insurance;
- ambulance service association insurance;
- preneed funeral merchandise or service contract insurance;
- prepaid health clinic insurance;
- certain federal employees group policies;
- any annuity contract or group annuity contract that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate.[17]

Assessments

The association has three operating accounts: health insurance, life insurance, and annuity for purposes of administration and assessments. The association may impose two classes of assessments: Class A for administrative costs and general expenses and Class B to carry out the powers and duties of the association with regard to an impaired or insolvent domestic insurer.[18] Class A assessments may not exceed $250 per year per member insurer. Class B assessments are calculated based on the premiums collected by each assessed member insurer on policies or contracts covered for each account in proportion to premiums collected by all assessed member insurers for the three most recent years. Florida law limits assessments on a member insurer to a maximum of one percent of the insurer's premiums written in the state regarding business covered by the account received during the three calendar years preceding the year in which the assessment is made, divided by three.[19]

[16] Section 631.717(9), F.S., and FLAHIGA, *Frequently Asked Questions*, available at http://www.flahiga.org/faq.cfm (last viewed Mar. 1, 2017).

[17] The association provides coverage for an annuity contract or certificate if the insurer issues an annuity to an individual and guarantees annuity benefits directly to the individual and does not guarantee through an intermediary. Under federal law, annuities of a custodial individual retirement account (IRA) are deemed owned by the individuals and are subject to control of the individuals. [26 United States Code ss. 408(a) and (b).] Currently, the association does not provide coverage of custodial IRA annuities because of the inclusion of "*guaranteed directly and* n*ot through an intermediary*" in the annuity coverage language provided in s. 631.713(3)(l), F.S. See DFS and association correspondence (on file with Banking and Insurance Committee).

[18] Section 631.718(2), F.S.

[19] Section 631.718(5)(a), F.S.

The National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) is an association of insurance regulators that coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. In 2017, the NAIC released an updated Life and Health Insurance Guaranty Association Act.[20] The model act is designed to protect policy owners, insureds, beneficiaries, annuitants, payees and assignees against losses (both in terms of payment of claims and continuation of coverage), which might otherwise occur due to an impairment or insolvency of an insurer. Further, the model provides a maximum liability of $500,000 for basic hospital medical and surgical insurance or major medical insurance.

III. Effect of Proposed Changes:

Section 1 amends s. 631.713, F.S., to revise the types of policies covered by the association. The bill expands coverage to include annuities issued by an insurer pursuant to the provisions of 26 U.S.C. s. 408(b), relating to individual retirement annuities, and annuities issued by an insurer and held by a custodian or trustee in accordance with the requirements of 26 U.S.C. s. 408 (a), relating to individual retirement accounts.

Section 2 amends s. 631.717, F.S., to increase the association's liability for the contractual obligations of an insolvent insurer for basic hospital expense health insurance policies, basic medical-surgical health insurance policies, or major medical expense health insurance policies from $300,000 to $500,000 with respect to any one life, effective January 1, 2020. The section provides that this coverage does not include long-term care policies, which have a coverage limit of $300,000.

Section 3 provides this act will 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.

[20] NAIC, Life and Health Insurance Guaranty Association Model Act 520-1 (1st Quarter 2017) available at: http://www.naic.org/store/free/MDL-520.pdf (last viewed Feb. 9, 2017).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases the association's liability for health insurance benefits from $300,000 to $500,000, which will provide greater protections for insureds who exceed the current limit and who are covered by an insolvent insurer. Further, the added coverage of annuities under an individual retirement account (IRA) or individual retirement annuity may provide additional consumer protections to beneficiaries of such annuities in the event of an insolvency.

The increase in the health insurance coverage limits from $300,000 to $500,000 and coverage of annuities under an IRA by the association may lead to additional assessments on member insurers in the event of the insolvency of an insurer.

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 the following sections of the Florida Statutes: 631.713 and 631.717.

IX. Additional Information:

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

CS by Appropriations on April 25, 2017:
The committee substitute:

- Reinstates the current statutory cap of $250 for the Class A assessment; and
- Provides that the increase in coverage limits by the association for specified health insurance policies is effective January 1, 2020, and does not include long-term care policies.

B. Amendments:

None.

714754

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 54 - 67

and insert:

(d) Effective January 1, 2020, for basic hospital expense health insurance policies, basic medical-surgical health insurance policies, or major medical expense health insurance policies, but not including long-term care policies, $500,000.

In no event is ~~shall~~ the association ~~be~~ liable for any penalties

714754

or interest.

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

And the title is amended as follows:

Delete lines 11 - 14

and insert:

health insurance policies beginning on a specified date; providing an

By Senator Broxson

1-00852-17 2017814__

A bill to be entitled

An act relating to the Florida Life and Health Insurance Guaranty Association; amending s. 631.713, F.S.; revising applicability of the Florida Life and Health Insurance Guaranty Association Act as to specified annuity contracts; amending s. 631.717, F.S.; revising the association's maximum aggregate liability for the contractual obligations of an insolvent insurer with respect to one life; specifying the association's maximum liability as to certain health insurance policies; amending s. 631.718, F.S.; revising the maximum limit of a certain annual assessment levied on member insurers by the association's board of directors; providing an effective date.

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

Section 1. Paragraph (l) of subsection (3) of section 631.713, Florida Statutes, is amended to read:

631.713 Application of part.—

(3) This part does not apply to:

(l) Any annuity contract or group annuity contract that is not issued to and owned by an individual, except to the extent of any annuity benefits:

1. Guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate;~~.~~

2. Under an annuity issued by an insurer under 26 U.S.C. s. 408(b); or

3. Under an annuity issued by an insurer and held by a custodian or trustee in accordance with 26 U.S.C. 408(a).

1-00852-17 2017814__

This paragraph applies to every insolvency regardless of its date of inception, and an assessment base may not include premiums for such excluded products.

Section 2. Subsection (9) of section 631.717, Florida Statutes, is amended to read:

631.717 Powers and duties of the association.—

(9) The association's liability for the contractual obligations of the insolvent insurer must ~~shall~~ be as great as, but no greater than, the contractual obligations of the insurer in the absence of such insolvency, unless such obligations are reduced as permitted by subsection (4), but the aggregate liability of the association with respect to one life may ~~shall~~ not exceed the following:

(a) For life insurance, $100,000 in net cash surrender and net cash withdrawal values. ~~for life insurance,~~

(b) For deferred annuity contracts, $250,000 in net cash surrender and net cash withdrawal values. ~~for deferred annuity contracts, or~~

(c) For all benefits, $300,000, ~~for all benefits~~ including cash values, except as provided in paragraph (d) ~~with respect to any one life~~.

(d) For basic hospital expense health insurance policies, basic medical-surgical health insurance policies, or major medical expense health insurance policies, $500,000.

In no event is ~~shall~~ the association ~~be~~ liable for any penalties or interest.

Section 3. Paragraph (a) of subsection (3) of section 631.718, Florida Statutes, is amended to read:

631.718 Assessments.—

(3)(a) The amount of any Class A assessment must ~~shall~~ be determined by the board and may be made on a non-pro rata basis. The assessment may not be credited against future insolvency assessments and may not exceed $500 ~~$250~~ per member insurer in any one calendar year.

Section 4. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight, *Alternating Chair*

SENATOR DOUG BROXSON
1st District

April 19, 2017

Senator Jack Latvala

412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latvala,

I respectfully request that Senate Bill 814 be placed on the Appropriations Committee agenda at your earliest convenience.

Thank you for your consideration and I look forward to discussing this good bill with you, and the members of the committee.

Respectfully,

Doug Broxson
State Senator

REPLY TO:
❒ 418 West Garden Street, 4th Floor, Room 403, Pensacola, Florida 32502 (850) 595-1036
❒ 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5001

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)

SB 814

Meeting Date | *Bill Number (if applicable)*

Topic FL Life + Health Guaranty Assoc.

Amendment Barcode (if applicable)

Name Jane Hennessy

Job Title Lobbyist

Address 106 S Monroe St

Street

Tall FL 32301

City *State* *Zip*

Phone 850/509-5800

Email Jahennessy@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against

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

Representing FL Life + Health Guaranty 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

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
2/1/17	SM	**Favorable**
2/20/17	JU	**Fav/CS**
04/18/17	AHE	**Recommend:Favorable**
4/24/17	AP	**Favorable**

February 1, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 48** – Judiciary Committee and Senator Oscar Braynon
HB 6515 – Representative Shevrin D. Jones
Relief of Wendy Smith and Dennis Darling

SPECIAL MASTER'S FINAL REPORT

THIS IS A UNOPPOSED CLAIM BILL BY DENNIS DARLING AND WENDY DARLING, AS REPRESENTATIVES OF THE ESTATE OF THEIR SON, DEVAUGHN DARLING, FOR $1.8 MILLION, BASED ON A FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT BETWEEN THE DARLINGS AND THE BOARD OF TRUSTEES OF FLORIDA STATE UNIVERSITY (FSU) AS COMPENSATION FOR THE DEATH OF DEVAUGHN WHICH OCCURRED DURING PRESEASON FOOTBALL DRILLS IN 2001.

CURRENT STATUS:

A claim bill for these Claimants was first filed in the 2007 Session, but was withdrawn at the request of Claimants before a hearing was held. A claim bill was filed again in the 2008 Session and a joint Senate/House claim bill hearing was held in 2007.

On February 16, 2009, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master, held a de novo hearing on a previous version of this bill, SB 32 (2008). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY.

It should be noted that the attached report issued by original Senate Special Master has been corrected to reflect $1.8 million as the amount of funds due Dennis Darling and Wendy Darling. Additionally, the report indicates that the original Special Master heard SB 26 (2008). However, that bill number is incorrect. The correct bill number is SB 32 (2008).

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Barbara M. Crosier. My responsibilities were to review the records relating to the claim bill, be available for questions from Senators, and determine whether any changes have occurred since the hearing before Judge Canter, which if known at the hearing, might have significantly altered the findings or recommendation in the report.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report.

For the reasons set forth above the undersigned recommends that Senate Bill 48 (2017) be reported favorably.

Respectfully submitted,

Barbara M .Crosier
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include the limits on costs, lobbying fees, and other similar expenses, which were included in the original bill.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
02/16/09	SM	Favorable

February 16, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 26 (2008)** Senator Al Lawson
Relief of Dennis Darling and Wendy Darling

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM BY DENNIS DARLING AND WENDY DARLING, AS REPRESENTATIVES OF THE ESTATE OF THEIR SON, DEVAUGHN DARLING, FOR $1.2 MILLION, BASED ON A FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT BETWEEN THE DARLINGS AND THE BOARD OF TRUSTEES OF FLORIDA STATE UNIVERSITY (FSU) AS COMPENSATION FOR THE DEATH OF DEVAUGHNWHICH OCCURRED DURING PRESEASON FOOTBALL DRILLS IN 2001.

FINDINGS OF FACT:

On February 26, 2001, while participating in "mat drills" in the Moore Athletic Center at Florida State University (FSU), DeVaughn Darling collapsed and died. Two autopsies were performed, but found "no definite morphologic cause of death." The autopsies, however, did find evidence of distended blood vessels "engorged" with sickled blood cells in several organs of his body.

It was determined months before, during DeVaughn's initial physical examination upon entering FSU as a freshman, that he had sickle cell trait. Sickle cell trait is the inheritance of one gene of sickle hemoglobin and one for normal hemoglobin. In contrast, sickle cell anemia is caused by the inheritance of two sickle cell genes and is a much more serious condition with

many adverse health consequences. In both the trait and the anemia, blood cells can distort (changing from a round shape to a crescent shape) and become less flexible. The cells are then less efficient at transporting oxygen to the muscles and organs of the body. The distortion and inflexibility of the blood cells impairs their ability to pass easily through the smaller blood vessels. The proportion of cells that distort and the degree of their distortion is greater in the case of sickle cell anemia.

Sickle cell trait occurs most commonly in persons of African descent and occurs in approximately 8% of African-Americans. It occurs in persons of other ancestry as well, but much less frequently.

Sickle cell trait is not treatable, but usually does not compromise the health of the individual with the trait. However, sickle cell trait has been linked to the deaths of 13 high school and college football players and a larger number of U.S. Army recruits. In all cases, the deaths occurred during extreme exertion while the individual was training. The sickling of blood cells during extreme exertion is brought on by four forces: (1) deficiency in the concentration of oxygen in arterial blood), (2) increase in body acids, (3) hyperthermia in muscles, and (4) red cell dehydration. It was established before 2001 that sickle cell trait is a factor that, when combined with other stress factors such as high temperature and dehydration, can result in "sickle cell collapse" and death during extreme exertion.

The medical issues related to athletes with sickle cell trait caused the National Collegiate Athletic Association (NCAA) to adopt guidelines regarding athletes with sickle cell trait. The 1998 guidelines contain a statement that, "There is controversy in the medical literature concerning whether sickle cell trait increases the risk of exercise-associated sudden death," but recommended that all athletes (1) avoid dehydration and acclimatize gradually to heat and humidity, (2) condition gradually for several weeks before engaging in exhaustive exercise regimens, and (3) refrain from extreme exertion during acute illness, especially one involving fever.

Mat drills are the name given to the pre-season conditioning drills for FSU football players conducted in February of each

year. They consist of three different physical activities conducted at separate "stations" which the players rotate through. There is a station which mostly involves running sprints, an "agility station" which involves running through ropes and around cones, and a station which involves drills on a large wrestling mat. The stations are run simultaneously, beginning and ending at same time. The football players are divided into three groups according to their size. As soon as the players in a group finish the drills at one station, they move together to another station. The entire exercise takes about 90 minutes to complete.

FSU football coaches are assigned to a single station for the entire 90-minute period. Trainers are also divided between stations. The coaches and trainers watch the players closely at all times. The coaches grade the players' performances in the drills, record the grades, and discuss the grades with the players at a meeting of all of the players after all the drills have been completed.

The mat drills had a reputation for being extremely challenging because of the physical exertion required. Devard Darling, Devaughn's twin brother and also a FSU football player, said the older players teased the freshmen about what they had in store for them when February came around and the mat drills started. The players were awakened at 5:30 a.m. and started the mat drills soon after getting up. Trash cans were set out for the specific purpose of providing receptacles for the players to vomit into.

At the mat drill station, the players formed in groups of four abreast at one end of the mat. There would usually be three or four lines with four players in each line. The seniors and starters formed the first lines; freshmen formed the back lines. At the oral commands or hand signals of the coaches, the players would throw themselves onto the mat on their chests and stomachs, spin quickly to the left and right, jump onto their feet, move laterally, sprint forward to the middle of the mat, run in place, sprint to the end of the mat, run in place, and then sprint forward to a matted wall. The number of times the players performed any single maneuver on the mat and the sequence of maneuvers would vary. For example, the coaches might make the players dive forward onto the mat once or they might make them do it several times. After

completing the drill, the four players would return to the end of the formation to await their turn to go again.

If a player did not perform a drill correctly, or "fell out" during a mat drill, all four players would be sent back to redo the drill. They redid the drill immediately while the other lines of players waited. Because of the inexperience of the freshmen, they would usually have to do more "go backs" than the other players.

The room where the mat drill took place was relatively small, about by 120 feet by 49 feet. Devard Darling said the room was always hot and muggy. In his statement to a police investigator, the head trainer said Devaughn was taken from the mat room to the training room after he collapsed because the mat room was "very hot."

The parties disputed whether the players were given reasonable access to water. The head trainer said the players were told to drink water before the mat drills began and there were water fountains in the hallways not far from the mat area. The players, however, said it was impossible to get a drink of water during the drills and nearly impossible to get water in the short time when the players moved to a new station. No "water break" was provided during the 90-minute mat drills. Furthermore, a high-pressure, hurry-up atmosphere was created that discouraged and impeded the players from going for water. I am persuaded by the evidence presented to me that, because of the way in which the mat drills were run, it was difficult for the players to get water, many of the players did not get water, and the players that managed to get water got less than they wanted.

On February 26, 2001, the mat drill was the last station for DeVaughn. Four coaches and seven trainers (including the student trainers) were present. The written statements provided by FSU's coaches and non-student trainers were identical in stating that they saw nothing "out of the ordinary" in DeVaughn's level of fatigue or behavior leading up to his collapse at the conclusion of the mat drill. However, the statements of several players and a couple of the student trainers were quite different. Some players said DeVaughn told them he couldn't see, that they saw him clutching his chest, and that he was having trouble getting up off the mat

and sometimes could not get up without help from other players. One student trainer said that, instead of diving forward onto the mat like the others, DeVaughn would just fall forward "like a board." Another student trainer said Devaughn would sometimes attempt to stand, but would fall back down.

DeVaughn's line of four players was made to go back more than once and was the last to finish the drill. Some players reported that Devaughn was not able to get into position fast enough to go back with his line and finished the drill by himself. He was the last player to finish the last station.

When DeVaughn finished the mat drill, he fell to his knees with his head resting against the wall. The head trainer and one of the players carried DeVaughn to the edge of the mat. His pulse was irregular and his breathing was shallow and erratic. DeVaughn was then carried downstairs to the training room where he was given oxygen and surrounded with ice packs to reduce his body temperature. Soon thereafter, however, DeVaughn stopped breathing. At that point, the training staff called 911. Policemen arrived first and brought a defibrillator which was used on Devaughn in an attempt to get his pulse going again. When the ambulance arrived, DeVaughn was taken to the hospital where he was pronounced dead.

Beginning in 2002, FSU changed the way it conducted the mat drills. Now, a water break and short rest are provided to the players when they are between stations and an emergency medical crew and ambulance are standing by to render medical assistance to a player if needed.

LITIGATION HISTORY:

Claimants sued FSU in the circuit court for Leon County in 2002. The case was successfully mediated and the parties entered into a Stipulated Settlement Agreement which called for payment to Dennis and Wendy Darling, as representatives of the estate of Devaughn Darling, the sovereign immunity limit of $200,000 and for FSU to support the passage of a claim bill for an additional $1.8 Million. The agreement does not contain a denial of liability by FSU. The circuit court entered a Final Judgment approving the settlement agreement on June 28, 2004.

CLAIMANTS' POSITION:

The Department is liable for the negligence of its coaches and trainers for 1) failing to provide DeVaughn access to water, 2)

failing to provide sufficient rest periods, 3) failing to recognize DeVaughn's physical distress, 4) failing to provide adequate access to emergency medical personnel and a defibrillator, and 5) failing to maintain an adequate emergency plan.

FSU'S POSITION:

- FSU denies liability for negligence, but believes the settlement is fair and reasonable under the circumstances.
- FSU complied with all applicable standards of care.
- DeVaughn exhibited no unusual signs of exhaustion that put any coach or trainer on notice of his critical condition.
- No FSU employee was negligent in failing to provide assistance to DeVaughn.
- DeVaughn had a cold that could have contributed to his physical distress.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether FSU is liable in negligence for the death of DeVaughn Darling and, if so, whether the amount of the claim is reasonable.

FSU had a duty to conduct its football training activities in a manner that did not unreasonably endanger the health of the players beyond the dangers that are inherent in the game of football. FSU breached that duty when its employees, both coaches and trainers, created a situation with the mat drills that was unreasonably dangerous for all players, but especially for a player with sickle cell trait. The situation was unreasonably dangerous because it involved extreme physical exertion in high temperature without reasonable access to water and without adequate opportunity to rest. The situation was more dangerous for players with sickle cell trait because the trait reduces the ability of the blood to transport oxygen and, therefore, increases the risk of exercise-associated sudden death.

DeVaughn's death was foreseeable because FSU knew that DeVaughn had sickle cell trait, knew that sickle cell trait was linked the deaths of football players during preseason training, and was aware of the sports medicine literature and NCAA

guidelines about extreme exertion, heat, dehydration, and lack of adequate pre-conditioning as factors that contribute to incidents of exercise-associated sudden death.

Furthermore, I am not persuaded by the statements of the coaches and trainers that DeVaughn's fatigue was "not out of the ordinary." No coach or trainer alleged that other players were grasping their chests, falling over "like boards," and unable to stand without help. The evidence shows that DeVaughn was showing signs of more intense physical exhaustion than other players and was probably suffering from sickle cell collapse during the course of the mat drill. However, only his final collapse at the end of the mat drill was considered by the training staff to be significant enough to warrant their intervention and assistance. It was negligent for the coaches and trainers not to intervene and render assistance to DeVaughn earlier than they did. Instead, the coaches worsened his physical distress by making him repeat the drill without a moment to rest or to get water.

The sickling of blood cells in a person with sickle cell trait begins quickly with extreme exertion, but is relieved quickly by rest. Providing water (or sports drinks) and short periods of rest during the mat drills, both of which are provided to players during a football game, is all that was needed to avoid the tragedy of DeVaughn Darling's death.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES AND LOBBYIST'S FEES: Claimant's attorneys agree to limit their fees to 25 percent of any amount awarded by the Legislature as required by s. 768.28(8), F.S. They also agree to pay the lobbyist's fee out of the attorney's fees. They have not acknowledged their awareness of the provision of the bill that also requires costs to be included in the 25 percent figure.

LEGISLATIVE HISTORY: A claim bill for these Claimants was first filed in the 2007 Session, but was withdrawn at the request of Claimants before a hearing was held. A claim bill was filed again in the 2008 Session and a joint Senate/House claim bill hearing was held in 2007.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 34 (2008) be reported FAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Al Lawson
Counsel of Record

By the Committee on Judiciary; and Senator Braynon

590-01952-17 201748c1

A bill to be entitled

An act for the relief of Wendy Smith and Dennis Darling, Sr., parents of Devaughn Darling, deceased; providing an appropriation to compensate the parents for the loss of their son, Devaughn Darling, whose death occurred while he was engaged in football preseason training on the Florida State University campus; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on February 21, 2001, Devaughn Darling, the son of Wendy Smith and Dennis Darling, Sr., collapsed and died while participating in preseason training in preparation for the upcoming football season at Florida State University, and

WHEREAS, after litigation had ensued and during mediation, the parents of Devaughn Darling and Florida State University agreed to compromise and settle all of the disputed claims rather than continue with litigation and its attendant uncertainties, and

WHEREAS, the parties resolved, compromised, and settled all claims by a stipulated settlement agreement providing for the entry of a consent final judgment against Florida State University in the amount of $2 million, of which the Division of Risk Management of the Department of Financial Services has paid the statutory limit of $200,000 pursuant to s. 768.28, Florida Statutes, and

WHEREAS, as provided by the settlement agreement, Florida State University has agreed to support the passage of a claim bill for the remaining unpaid portion of the consent judgment,

590-01952-17 201748c1

$1.8 million, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Florida State University is authorized and directed to appropriate from funds of the university not otherwise appropriated to draw a warrant in the amount of $1.8 million, to be paid to Wendy Smith and Dennis Darling, Sr., parents of decedent Devaughn Darling, as relief for their losses.

Section 3. The amount paid by the Division of Risk Management of the Department of Financial Services pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the death of Devaughn Darling. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 4. 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)

4/25/17
Meeting Date

48
Bill Number (if applicable)

Topic Derrough Darling Claim bill

Amendment Barcode (if applicable)

Name KAREN SKYERS

Job Title Attorney

Address 204 S. Monroe St 203
Street

TLH FL 32301
City *State* *Zip*

Phone 813-304-9463

Email Kskyers@bplegal.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Wendy Smith and Dennis Darling

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 590 (765792)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Judiciary Committee; and Senator Brandes and others
SUBJECT:	Child Support and Parenting Time Plans
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Favorable**
2.	Stallard	Cibula	JU	**Fav/CS**
3.	Blizzard	Betta	AGG	**Recommend: Fav/CS**
4.	Blizzard	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 590 authorizes the Department of Revenue (department) to establish parenting time plans agreed to by both parents in Title IV-D child support actions. The department will be required to provide parents Title IV-D Parenting Time Plans with a proposed administrative support order. The bill also creates a standard Title IV-D Parenting Time Plan that may be used by parents. In the event the parents cannot agree on a parenting time plan, they will be referred to the circuit court for the establishment of a plan. In these instances, parents will not pay a fee to file a petition to determine a parenting time plan.

The bill has a significant impact on the Department of Revenue and appropriates $1,041,126 from the General Revenue Fund to the department to carry out the provisions of the bill. The bill has an indeterminate impact on the workload of the state court system. See Section V.

The bill takes effect January 1, 2018.

II. Present Situation:

Chapter 61, F.S., addresses the issues of dissolution of marriage, child support, and parenting time plans. In a dissolution of marriage, matters relating to the marriage are settled as part of the judicial proceeding or through the adoption of a marital settlement agreement. If the parties to

the dissolution cannot agree then the circuit court has the jurisdiction to resolve outstanding issues.

The Legislature designated the Department of Revenue (department) as the state agency responsible for the administration of the child support enforcement program, Title IV-D of the Social Security Act, 42 USC. ss. 651 et seq.[1] As the state Title IV-D agency, the department has the authority to take actions to carry out the public policy of ensuring children are maintained from the resources of their parents to the extent possible. The department's authority includes, but is not limited to, the establishment of paternity or support obligations, as well as modifications, enforcement, and collection of support obligations.[2] According to the department's website, as of federal fiscal year 2014, the department collected $1.57 billion in child support whereby 98 percent went to the families. The remaining 2 percent reimbursed public assistance dollars. Additionally, $1.02 billion in child support was collected through income withholding from the parent's paycheck. For every dollar spent the child support program collects $5.75[3].

The Title IV-D program plays a critical role in assuring that parents who live apart from their children meet their financial obligations.[4] Child well-being is improved by positive and consistent emotional and financial support from both parents.[5] Engaged fathering significantly enhances children's social, cognitive, and academic behavior in a positive manner.[6]

There is no systematic, efficient mechanism for families to establish parenting time agreements for children whose parents were not married at the time of their birth.[7] While divorcing parents often establish parenting time agreements as part of the divorce proceedings in circuit court, child support systems require unmarried parents to participate in multiple, often overlapping, legal proceedings in order to resolve issues of child support and parenting time.[8] Addressing both the calculation of child support and the amount of parenting time as part of the same process increases efficiency and reduces the burdens on parents of being involved in multiple administrative or judicial processes. A structured, formal approach to parenting time helps both parents manage their co-parenting relationship and reduce conflict, ambiguity, unpredictability about parenting time arrangements, and may increase child support compliance.[9]

A handful of states or jurisdictions (Michigan, Texas, Orange County, California, Hennepin County, Minnesota) have child support initiatives that incorporate parenting time agreements into initial child support orders, many focusing on parenting agreements where the parents

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[1] s. 409.2557(1), F.S.
[2] section 409.2557(2), F.S.
[3] Florida Department of Revenue, Child Support Enforcement website, *available at* http://floridarevenue.com/dor/childsupport/pdf/cs1001x.pdf and last visited March 1, 2017.
[4] U.S. Department of Health and Human Services, Administration for Children & Families, *Promoting Child Well-Being & Family Self-Sufficiency, Child Support and Parenting Time: Improving Coordination to Benefit Children*, Child Support Fact Sheet Series, Number 13, on file with the Senate Committee on Children, Families & Elder Affairs.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.* at page 2.
[9] *Id.*

already agree on the division of time.[10] Texas is the most standardized, statewide program incorporating parenting time agreements into child support orders.[11] The Texas Family Code requires that a final order that stems from a suit affecting a parent-child relationship must include a parenting plan.[12] Unlike other states, Texas provides a statutory "standard possession order" that is presumed to provide a noncustodial parent with reasonable minimum time with his or her child and to be in the best interest of the child.[13]

In 1989, the Texas Legislature moved forward with not only the required child support guidelines as required by the federal government, but also with statutory presumptive visitation guidelines in the form of a standard order.[14] If there is a history of domestic violence or sexual abuse, the standard possession order may be inapplicable. The court must consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a noncustodial parent.[15]

In the initial creation of the Title IV-D program, the United States Congress provided financial subsidies for the operation of state Title IV-D programs through financial incentives based on support collections. Because the activities that are eligible for federal funding are limited to those required to establish paternity, establish and enforce child support obligations, collect and distribute payment, and locate absent parents, most states have taken the position that child support orders obtained or issued by IV-D programs not include provisions regarding parenting time, at the risk of jeopardizing federal funding for their programs.[16]

Texas has managed to include parenting plans in its support order for the last 30 years by maintaining that the cost of establishing a visitation order, coinciding with the establishment of paternity and/or a support obligation is a reasonable and minimal expense that must be incurred as part of the support order establishment process. Texas has argued that its success is based on:

- The existence in Texas law of the standard possession order,
- Simple child support guidelines,
- Agency policies and practices with dealing with cases where any dispute regarding parenting time, and
- The agency's successful public educational and outreach activities.[17]

The Texas Office of Attorney General (the Title IV-D agency in Texas) has adopted policies and practices to make the visitation order establishment process highly efficient. The agency is not involved in the resolution of any disputed possession issue between the parties. Disputed cases are referred to the appropriate trial court for a final resolution of visitation disputes.[18] However,

[10] *Id*.
[11] *Id* at page 3.
[12] Alicia G. Key, *Parenting Time in Texas Child Support Cases*, Family Court Review. Vol 53 No. 2, April 2015 258-266, on filed with the Senate Committee on Children, Families & Elder Affairs.
[13] See Tex. Fam. Code Section 153.252 (West 2013).
[14] Key, *supra* note 4, at 111.
[15] Key, *supra* at 261.
[16] *See* 45 C.F.R., Section 304.20(b) (1982).
[17] Key, *supra* at 263.
[18] See Tex. Fam. Code Section 201.007(b)

the parties do not need to file additional pleadings or incur additional expense at the second hearing for a decision on the visitation issues that may be in dispute.[19]

In s. 409.2563, F.S., the legislative intent is clear that the jurisdiction of the circuit courts to hear and determine issues regarding child support were not limited. The intent was to provide the department with an alternative procedure to establish child support obligations in Title IV-D cases in a fair and expeditious manner when there is no court order of support.[20] The Legislature did not grant the department the jurisdiction to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity except as otherwise provided in statute, or award of or change of time-sharing.[21] In Title IV-D cases, if parents want to establish a shared parenting time schedule that is enforceable by the courts, they have to file a separate cause of action in the circuit court.

III. Effect of Proposed Changes:

Section 1 amends s. 409.2551, F.S., to provide that it is the public policy of the state to encourage frequent contact between child and each parent.

Section 2 amends s. 409.2554, F.S., to provide definitions for "State Case Registry," "State Disbursement Unit," and "Title IV-D Standard Parenting Time Plans."

Section 3 amends s. 409.2557, F.S., to provide the department the authority to establish Title IV-D Standard Parenting Time Plans or any other parenting time plan agreed to and signed by the parents.

Section 4 amends s. 409.2563, F.S., to allow the department to establish parenting time plans only if the parents are in agreement. This section also provides that, if the parents do not have a parenting time plan and do not agree to a Title IV-D Standard Parenting Time Plan, a time plan will not be included in the initial administrative order setting child support. A statement explaining the absence of the parenting time plan will be included with the initial administrative order setting child support.

Any notifications by the department to parents will not include a Title IV-D Standard Parenting Time Plan if Florida is not the child's home state or one parent does not reside in Florida. The Title IV-D Standard Parenting Time Plan is not intended for use by and shall not be provided to either parent if there is a request for nondisclosure due to domestic or family violence, or if the parent who owes child support is incarcerated.

The bill also provides that if both parents have agreed to a parenting time plan before the administrative support order is established, the plan will be incorporated into the administrative support order. However, the department does not have the jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order. When the department provides notice of proceeding to establish an administrative support order it must include a copy of the Title IV-D Standard Parenting Time Plan. Copies of proposed administrative support

[19] Key, *supra* at 263.
[20] section 409.2568(2)(a), F.S.
[21] section 409.2568(2)(b), F.S.

orders provided to parents will include a copy of the Title IV-D Standard Parenting Time Plan, along with other required documents. If a hearing is held, an administrative support order will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents.

Section 5 creates s. 409.25633, F.S., to provide that a Title IV-D Standard Parenting Time Plan must be included in any administrative action to establish child support taken by the department if the parents agree to and sign the plan. If there is no agreement as to a parenting time plan, then the department must enter an administrative order for child support and refer the parents to a court of appropriate jurisdiction to establish a parenting time plan. The department must also develop a form petition and provide information to the parents on the process to establish such plan.

This section also creates a Title IV-D Standard Parenting Time Plan that will be presented to parents in an administrative child support action. The agreed upon parenting time plan is to be in the best interest of the child and special consideration should be given to the age and needs of each child. There is no presumption for or against the father or mother of the child or against any specific time-sharing schedule when a parenting time plan is created. The Title IV-D Standard Parenting Time Plans are not intended for use by and shall not be provided to parents and families with domestic or family violence concerns.

The department is directed to create and provide a form for a petition to establish a parenting time plan for parents who have not agreed to a parenting schedule at the time of the child support hearing. The department will provide the form to the parents but will not file the petition or represent either parent at a hearing to establish parenting time. The parents will not be required to pay a fee to file the petition to establish a parenting time plan.

Section 6 amends s. 409.2564, F.S., to provide that when the department institutes an action to secure the payment of current support or any arrearage that may have accrued under an existing order of support, and a parenting time plan was not incorporated into the existing order of support and is appropriate, the department will include either a parenting time plan or Title IV-D Standard Parenting Time Plan that has been agreed to and signed by the parents.

Section 7 amends s. 409.256, F.S., to correct cross-references.

Section 8 amends s. 409.2572, F.S., to correct cross-references.

Section 9 directs the Department of Revenue to report to the Governor, the President of the Senate and the Speaker of the House of Representatives by December 31, 2018, on:

- The status of the implementation of this act;
- The number of parenting plans that were entered into with the administrative child support orders;
- The number of parents that were referred to circuit court for the establishment of parenting time plans; and
- Any recommendations the department may have to further implement this act.

Section 10 provides an appropriation to the Department of Revenue of $690,650 in nonrecurring general revenue and $350,476 in recurring general revenue for the 2017-2018 fiscal year to implement the provisions in the bill.

Section 11 provides an effective date of January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill provides what appears to be a simple and cost-effective means of determining parenting time plans to separated or never-married parents who generally have a low income. If the parents can agree on the standard parenting time plan or another parenting time plan, they will not need to proceed in circuit court and incur the related costs to acquire a parenting time order.

C. Government Sector Impact:

The bill appropriates $1,041,126 from the General Revenue Fund to the Department of Revenue (department) for Fiscal Year 2017-2018. Of that amount, $690,650 in nonrecurring general revenue is appropriated to update the department's Child Support Automated Management System to meet new requirements, and $350,476 in recurring general revenue is appropriated to develop and deploy new forms, notices, procedures, and training.

The impact on the workload of the state court system is indeterminate but is expected to be insignificant. The bill waives the filing fee for parents who go through the Title IV-D administrative action but cannot agree on a parenting time plan, and who then proceed in circuit court. Currently, the parent who files an action in circuit court presumably must

pay the filing fee. However, the number of these cases currently filed each year, as well as the number that will be filed under the bill, is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.2551, 409.2554, 409.2557, 409.2563, 409.2564, 409.256, and 409.2572.

This bill creates section 409.25633 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.)

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

- Clarifies that parents must agree to and sign any parenting time plan that will be incorporated into an administrative child support order.
- Removes the reference to separate parenting time plans for children under the age of three and removes the reference for Title IV-D Standard Parenting Time Plan for parents that live more than 100 miles of each other.
- Clarifies that the Title IV-D Standard Parenting Time Plan is not for the use by and will not be provided to parents and families with domestic or family violence concerns.
- Directs the department to report to the Governor, the President of the Senate and the Speaker of the House of Representatives by December 31, 2018, on:
  - The status of implementation of this act;
  - The number of parenting plans that were entered into with the administrative child support orders;
  - The number of parents that were referred to circuit court for the establishment of parenting time plans; and
  - Any recommendations the department may have to further implement this act.
- Provides an appropriation of $1,041,126 from the General Revenue Fund to the department to implement the provisions in this act.

CS by Judiciary on March 28, 2017:
Clarifies that the parents in a Title IV-D action to determine paternity or to establish or modify child support must be presented with a Title IV-D Standard Parenting Time Plan,

and that the standard plan or another parenting time plan must be incorporated in the administrative order resulting from the action if the parents agree to one of the plans.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
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	.	
	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 582 and 583
insert:

(2) If, after the incorporation of an agreed-upon parenting time plan into an administrative order, a modification or enforcement of the parenting time plan may be sought through a court of appropriate jurisdiction.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

464850

Delete line 22

and insert:

required to pay a fee to file the petition; requiring the enforcement or modification of an established parenting time plan to be sought through a court of appropriate jurisdiction;

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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 child support and parenting time plans; amending s. 409.2551, F.S.; providing legislative intent to encourage frequent contact between a child and each parent; amending s. 409.2554, F.S.; defining terms; amending s. 409.2557, F.S.; authorizing the Department of Revenue to establish parenting time plans agreed to by both parents in Title IV-D child support actions; amending s. 409.2563, F.S.; requiring the department to mail a Title IV-D Standard Parenting Time Plan with proposed administrative support orders; providing requirements for including parenting time plans in certain administrative orders; creating s. 409.25633, F.S.; providing the purpose and requirements for a Title IV-D Standard Parenting Time Plan; requiring the department to refer parents who do not agree on a parenting time plan to a circuit court; requiring the department to create and provide a form for a petition to establish a parenting time plan under certain circumstances; specifying that the parents are not required to pay a fee to file the petition; authorizing the department to adopt rules; amending s. 409.2564, F.S.; authorizing the department to incorporate either a signed, agreed-upon parenting time plan or a signed Title IV-D Standard Parenting Time Plan in a child support order; amending ss.

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409.256 and 409.2572, F.S.; conforming cross-references; requiring the department to submit a report to the Governor and Legislature by a specified date; specifying requirements for the report; providing an appropriation; providing an effective date.

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

Section 1. Section 409.2551, Florida Statutes, is amended to read:

409.2551 Legislative intent.—Common-law and statutory procedures governing the remedies for enforcement of support for financially dependent children by persons responsible for their support have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the Attorney General has resulted in a growing burden on the financial resources of the state, which is constrained to provide public assistance for basic maintenance requirements when parents fail to meet their primary obligations. The state, therefore, exercising its police and sovereign powers, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be augmented by additional remedies directed to the resources of the responsible parents. In order to render resources more immediately available to meet the needs of dependent children, it is the legislative intent that the remedies provided herein are in addition to, and not in lieu of, existing remedies. It is


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declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs. It is also the public policy of this state to encourage frequent contact between a child and each parent to optimize the development of a close and continuing relationship between each parent and the child.

Section 2. Section 409.2554, Florida Statutes, is reordered and amended to read:

409.2554 Definitions; ss. 409.2551-409.2598.—As used in ss. 409.2551-409.2598, the term:

(5) ~~(1)~~ "Department" means the Department of Revenue.

(6) ~~(2)~~ "Dependent child" means any unemancipated person under the age of 18, any person under the age of 21 and still in school, or any person who is mentally or physically incapacitated when such incapacity began before ~~prior to~~ such person reaching the age of 18. This definition may ~~shall~~ not be construed to impose an obligation for child support beyond the child's attainment of majority except as imposed in s. 409.2561.

(3) "Court" means the circuit court.

(4) "Court order" means any judgment or order of any court of appropriate jurisdiction of the state, or an order of a court of competent jurisdiction of another state, ordering payment of a set or determinable amount of support money.

(7) ~~(5)~~ "Health insurance" means coverage under a fee-for-service arrangement, health maintenance organization, or preferred provider organization, and other types of coverage


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available to either parent, under which medical services could be provided to a dependent child.

(8) ~~(6)~~ "Obligee" means the person to whom support payments are made pursuant to an alimony or child support order.

(9) ~~(7)~~ "Obligor" means a person who is responsible for making support payments pursuant to an alimony or child support order.

(12) ~~(8)~~ "Public assistance" means money assistance paid on the basis of Title IV-E and Title XIX of the Social Security Act, temporary cash assistance, or food assistance benefits received on behalf of a child under 18 years of age who has an absent parent.

(10) ~~(9)~~ "Program attorney" means an attorney employed by the department, under contract with the department, or employed by a contractor of the department, to provide legal representation for the department in a proceeding related to the determination of paternity or the establishment, modification, or enforcement of support brought pursuant to law.

(11) ~~(10)~~ "Prosecuting attorney" means any private attorney, county attorney, city attorney, state attorney, program attorney, or an attorney employed by an entity of a local political subdivision who engages in legal action related to the determination of paternity or the establishment, modification, or enforcement of support brought pursuant to this act.

(13) "State Case Registry" means the automated registry maintained by the Title IV-D agency, containing records of each Title IV-D case and of each support order established or modified in the state on or after October 1, 1998. Such records must consist of data elements as required by the United States


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Secretary of Health and Human Services.

(14) "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the department in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.

(16) "Title IV-D Standard Parenting Time Plan" means a document that may be agreed to by the parents to govern the relationship between the parents and to provide the parent who owes support a reasonable minimum amount of time with his or her child. The plan set forth in s. 409.25633 includes timetables that specify the time, including overnights and holidays, that a child may spend with each parent.

(15) ~~(11)~~ "Support," unless otherwise specified, means:

(a) Child support, and, when the child support obligation is being enforced by the Department of Revenue, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living.

(b) Child support only in cases not being enforced by the Department of Revenue.

(1) ~~(12)~~ "Administrative costs" means any costs, including attorney ~~attorney's~~ fees, clerk's filing fees, recording fees and other expenses incurred by the clerk of the circuit court, service of process fees, or mediation costs, incurred by the Title IV-D agency in its effort to administer the Title IV-D


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program. The administrative costs that ~~which~~ must be collected by the department shall be assessed on a case-by-case basis based upon a method for determining costs approved by the Federal Government. The administrative costs shall be assessed periodically by the department. The methodology for determining administrative costs shall be made available to the judge or any party who requests it. Only those amounts ordered independent of current support, arrears, or past public assistance obligation shall be considered and applied toward administrative costs.

(2) ~~(13)~~ "Child support services" includes any civil, criminal, or administrative action taken by the Title IV-D program to determine paternity, establish, modify, enforce, or collect support.

(17) ~~(14)~~ "Undistributable collection" means a support payment received by the department which the department determines cannot be distributed to the final intended recipient.

(18) ~~(15)~~ "Unidentifiable collection" means a payment received by the department for which a parent, depository or circuit civil numbers, or source of the payment cannot be identified.

Section 3. Subsection (2) of section 409.2557, Florida Statutes, is amended to read:

409.2557 State agency for administering child support enforcement program.—

(2) The department in its capacity as the state Title IV-D agency has ~~shall have~~ the authority to take actions necessary to carry out the public policy of ensuring that children are maintained from the resources of their parents to the extent

possible. The department's authority includes ~~shall include~~, but is not ~~be~~ limited to, the establishment of paternity or support obligations, the establishment of a Title IV-D Standard Parenting Time Plan or any other parenting time plan agreed to and signed by the parents, and ~~as well as~~ the modification, enforcement, and collection of support obligations.

Section 4. Subsections (2), (4), (5), and (7) of section 409.2563, Florida Statutes, are amended to read:

409.2563 Administrative establishment of child support obligations.—

(2) PURPOSE AND SCOPE.—

(a) It is not the Legislature's intent to limit the jurisdiction of the circuit courts to hear and determine issues regarding child support or parenting time. This section is intended to provide the department with an alternative procedure for establishing child support obligations and establishing a parenting time plan only if the parents are in agreement, in Title IV-D cases in a fair and expeditious manner when there is no court order of support. The procedures in this section are effective throughout the state and shall be implemented statewide.

(b) If the parents do not have an existing time-sharing schedule or parenting time plan and do not agree to a parenting time plan, a plan may not be included in the initial administrative order and the order must include a statement explaining its absence.

(c) If the parents have a judicially established parenting time plan, the plan may not be included in the administrative or initial judicial order.

(d) Any notification provided by the department may not include a Title IV-D Standard Parenting Time Plan if Florida is not the child's home state, when one parent does not reside in Florida, if either parent has requested nondisclosure for fear of harm from the other parent, or when the parent who owes support is incarcerated.

(e) ~~(b)~~ The administrative procedure set forth in this section concerns only the establishment of child support obligations and, if agreed to and signed by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan. This section does not grant jurisdiction to the department or the Division of Administrative Hearings to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity, except for a determination of paternity as provided in s. 409.256, ~~or award of~~ or change of time-sharing. If both parents have agreed to and signed a parenting time plan before the establishment of the administrative support order, the department or the Division of Administrative Hearings shall incorporate the agreed-upon parenting time plan into the administrative support order. This paragraph notwithstanding, the department and the Division of Administrative Hearings may make findings of fact that are necessary for a proper determination of a parent's support obligation as authorized by this section.

(f) ~~(c)~~ If there is no support order for a child in a Title IV-D case whose paternity has been established or is presumed by law, or whose paternity is the subject of a proceeding under s. 409.256, the department may establish a parent's child support

obligation pursuant to this section, s. 61.30, and other relevant provisions of state law. The administrative support order must include a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to and signed by both parents. The parent's obligation determined by the department may include any obligation to pay retroactive support and any obligation to provide for health care for a child, whether through insurance coverage, reimbursement of expenses, or both. The department may proceed on behalf of:

1. An applicant or recipient of public assistance, as provided by ss. 409.2561 and 409.2567;

2. A former recipient of public assistance, as provided by s. 409.2569;

3. An individual who has applied for services as provided by s. 409.2567;

4. Itself or the child, as provided by s. 409.2561; or

5. A state or local government of another state, as provided by chapter 88.

(g) ~~(d)~~ Either parent, or a caregiver if applicable, may at any time file a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any. A support order issued by a circuit court prospectively supersedes an administrative support order rendered by the department.

(h) ~~(c)~~ Pursuant to paragraph (e) ~~(b)~~, neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact. The department or the Division of Administrative Hearings shall incorporate a parenting time plan

or Title IV-D Standard Parenting Time Plan as agreed to and signed by both parents into the administrative support order. Either parent may at any time file a civil action in a circuit having jurisdiction and proper venue for a determination of child custody and rights of parental contact.

(i) ~~(f)~~ The department shall terminate the administrative proceeding and file an action in circuit court to determine support if within 20 days after receipt of the initial notice the parent from whom support is being sought requests in writing that the department proceed in circuit court or states in writing his or her intention to address issues concerning time-sharing or rights to parental contact in court and if within 10 days after receipt of the department's petition and waiver of service the parent from whom support is being sought signs and returns the waiver of service form to the department.

(j) ~~(g)~~ The notices and orders issued by the department under this section shall be written clearly and plainly.

(4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE SUPPORT ORDER.—To commence a proceeding under this section, the department shall provide to the parent from whom support is not being sought and serve the parent from whom support is being sought with a notice of proceeding to establish administrative support order, a copy of the Title IV-D Standard Parenting Time Plan, and a blank financial affidavit form. The notice must state:

(a) The names of both parents, the name of the caregiver, if any, and the name and date of birth of the child or children;

(b) That the department intends to establish an administrative support order as defined in this section;

(c) That the department will incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan, as agreed to and signed by both parents, into the administrative support order;

(d) ~~(c)~~ That both parents must submit a completed financial affidavit to the department within 20 days after receiving the notice, as provided by paragraph (13)(a);

(e) ~~(d)~~ That both parents, or parent and caregiver if applicable, are required to furnish to the department information regarding their identities and locations, as provided by paragraph (13)(b);

(f) ~~(e)~~ That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses to ensure receipt of all subsequent pleadings, notices, and orders, as provided by paragraph (13)(c);

(g) ~~(f)~~ That the department will calculate support obligations based on the child support guidelines schedule in s. 61.30 and using all available information, as provided by paragraph (5)(a), and will incorporate such obligations into a proposed administrative support order;

(h) ~~(g)~~ That the department will send by regular mail to both parents, or parent and caregiver if applicable, a copy of the proposed administrative support order, the department's child support worksheet, and any financial affidavits submitted by a parent or prepared by the department;

(i) ~~(h)~~ That the parent from whom support is being sought may file a request for a hearing in writing within 20 days after the date of mailing or other service of the proposed

administrative support order or will be deemed to have waived the right to request a hearing;

(j) ~~(i)~~ That if the parent from whom support is being sought does not file a timely request for hearing after service of the proposed administrative support order, the department will issue an administrative support order that incorporates the findings of the proposed administrative support order, and any agreed-upon parenting time plan. The department will send by regular mail a copy of the administrative support order and any incorporated parenting time plan to both parents, or parent and caregiver if applicable;

(k) ~~(j)~~ That after an administrative support order is rendered incorporating any agreed-upon parenting time plan, the department will file a copy of the order with the clerk of the circuit court;

(l) ~~(k)~~ That after an administrative support order is rendered, the department may enforce the administrative support order by any lawful means. The department does not have jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order;

(m) ~~(l)~~ That either parent, or caregiver if applicable, may file at any time a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any, and that a support order issued by a circuit court supersedes an administrative support order rendered by the department;

(n) ~~(m)~~ That neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact or time-sharing, and

these issues may be addressed only in circuit court. The department or the Division of Administrative Hearings may incorporate, if agreed to and signed by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan when the administrative support order is established.

1. The parent from whom support is being sought may request in writing that the department proceed in circuit court to determine his or her support obligations.

2. The parent from whom support is being sought may state in writing to the department his or her intention to address issues concerning custody or rights to parental contact in circuit court.

3. If the parent from whom support is being sought submits the request authorized in subparagraph 1., or the statement authorized in subparagraph 2. to the department within 20 days after the receipt of the initial notice, the department shall file a petition in circuit court for the determination of the parent's child support obligations, and shall send to the parent from whom support is being sought a copy of its petition, a notice of commencement of action, and a request for waiver of service of process as provided in the Florida Rules of Civil Procedure.

4. If, within 10 days after receipt of the department's petition and waiver of service, the parent from whom support is being sought signs and returns the waiver of service form to the department, the department shall terminate the administrative proceeding without prejudice and proceed in circuit court.

5. In any circuit court action filed by the department pursuant to this paragraph or filed by a parent from whom

support is being sought or other person pursuant to paragraph (m) ~~(l)~~ or paragraph (o) ~~(n)~~, the department shall be a party only with respect to those issues of support allowed and reimbursable under Title IV-D of the Social Security Act. It is the responsibility of the parent from whom support is being sought or other person to take the necessary steps to present other issues for the court to consider; ~~.~~

(o) ~~(n)~~ That if the parent from whom support is being sought files an action in circuit court and serves the department with a copy of the petition within 20 days after being served notice under this subsection, the administrative process ends without prejudice and the action must proceed in circuit court; and

(p) ~~(o)~~ Information provided by the Office of State Courts Administrator concerning the availability and location of self-help programs for those who wish to file an action in circuit court but who cannot afford an attorney.

The department may serve the notice of proceeding to establish an administrative support order and agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan by certified mail, restricted delivery, return receipt requested. Alternatively, the department may serve the notice by any means permitted for service of process in a civil action. For purposes of this section, an authorized employee of the department may serve the notice and execute an affidavit of service. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall

attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. The department shall provide the parent from whom support is not being sought or the caregiver with a copy of the notice by regular mail to the last known address of the parent from whom support is not being sought or caregiver.

(5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

(a) After serving notice upon a parent in accordance with subsection (4), the department shall calculate that parent's child support obligation under the child support guidelines schedule as provided by s. 61.30, based on any timely financial affidavits received and other information available to the department. If either parent fails to comply with the requirement to furnish a financial affidavit, the department may proceed on the basis of information available from any source, if such information is sufficiently reliable and detailed to allow calculation of guideline schedule amounts under s. 61.30. If a parent receives public assistance and fails to submit a financial affidavit, the department may submit a financial affidavit or written declaration for that parent pursuant to s. 61.30(15). If there is a lack of sufficient reliable information concerning a parent's actual earnings for a current or past period, it shall be presumed for the purpose of establishing a support obligation that the parent had an earning capacity equal

to the federal minimum wage during the applicable period.

(b) The department shall send by regular mail to both parents, or to a parent and caregiver if applicable, copies of the proposed administrative support order, a copy of the Title IV-D Standard Parenting Time Plan, its completed child support worksheet, and any financial affidavits submitted by a parent or prepared by the department. The proposed administrative support order must contain the same elements as required for an administrative support order under paragraph (7)(e).

(c) The department shall provide a notice of rights with the proposed administrative support order, which notice must inform the parent from whom support is being sought that:

1. The parent from whom support is being sought may, within 20 days after the date of mailing or other service of the proposed administrative support order, request a hearing by filing a written request for hearing in a form and manner specified by the department;

2. If the parent from whom support is being sought files a timely request for a hearing, the case shall be transferred to the Division of Administrative Hearings, which shall conduct further proceedings and may enter an administrative support order;

3. A parent from whom support is being sought who fails to file a timely request for a hearing shall be deemed to have waived the right to a hearing, and the department may render an administrative support order pursuant to paragraph (7)(b);

4. The parent from whom support is being sought may consent in writing to entry of an administrative support order without a hearing;

5. The parent from whom support is being sought may, within 10 days after the date of mailing or other service of the proposed administrative support order, contact a department representative, at the address or telephone number specified in the notice, to informally discuss the proposed administrative support order and, if informal discussions are requested timely, the time for requesting a hearing will be extended until 10 days after the department notifies the parent that the informal discussions have been concluded; and

6. If an administrative support order that establishes a parent's support obligation and incorporates either a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to and signed by both parents is rendered, whether after a hearing or without a hearing, the department may enforce the administrative support order by any lawful means. The department does not have the jurisdiction or authority to enforce a parenting time plan.

(d) If, after serving the proposed administrative support order but before a final administrative support order is rendered, the department receives additional information that makes it necessary to amend the proposed administrative support order, it shall prepare an amended proposed administrative support order, with accompanying amended child support worksheets and other material necessary to explain the changes, and follow the same procedures set forth in paragraphs (b) and (c).

(7) ADMINISTRATIVE SUPPORT ORDER.—

(a) If a hearing is held, the administrative law judge of the Division of Administrative Hearings shall issue an

administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to and signed by both parents, or a final order denying an administrative support order, which constitutes final agency action by the department. The Division of Administrative Hearings shall transmit any such order to the department for filing and rendering.

(b) If the parent from whom support is being sought does not file a timely request for a hearing, the parent will be deemed to have waived the right to request a hearing.

(c) If the parent from whom support is being sought waives the right to a hearing, or consents in writing to the entry of an order without a hearing, the department may render an administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to and signed by both parents.

(d) The department shall send by regular mail a copy of the administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to and signed by both parents, or the final order denying an administrative support order, to both parents, or a parent and caregiver if applicable. The parent from whom support is being sought shall be notified of the right to seek judicial review of the administrative support order in accordance with s. 120.68.

(e) An administrative support order must comply with ss. 61.13(1) and 61.30. The department shall develop a standard form or forms for administrative support orders. An administrative support order must provide and state findings, if applicable, concerning:

1. The full name and date of birth of the child or children;

2. The name of the parent from whom support is being sought and the other parent or caregiver;

3. The parent's duty and ability to provide support;

4. The amount of the parent's monthly support obligation;

5. Any obligation to pay retroactive support;

6. The parent's obligation to provide for the health care needs of each child, whether through health insurance, contribution toward the cost of health insurance, payment or reimbursement of health care expenses for the child, or any combination thereof;

7. The beginning date of any required monthly payments and health insurance;

8. That all support payments ordered must be paid to the ~~Florida~~ State Disbursement Unit as provided by s. 61.1824;

9. That the parents, or caregiver if applicable, must file with the department when the administrative support order is rendered, if they have not already done so, and update as appropriate the information required pursuant to paragraph (13)(b);

10. That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses pursuant to paragraph (13)(c); and

11. That if the parent ordered to pay support receives reemployment assistance or unemployment compensation benefits, the payor shall withhold, and transmit to the department, 40 percent of the benefits for payment of support, not to exceed

the amount owed.

An income deduction order as provided by s. 61.1301 must be incorporated into the administrative support order or, if not incorporated into the administrative support order, the department or the Division of Administrative Hearings shall render a separate income deduction order.

Section 5. Section 409.25633, Florida Statutes, is created to read:

409.25633 Title IV-D Standard Parenting Time Plans.—The best interest of the child is the primary consideration of the parenting plan and special consideration should be given to the age and needs of each child. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when a parenting time plan is created.

(1) A Title IV-D Standard Parenting Time Plan shall be presented to the parents in any administrative action taken by the Title IV-D program to establish or modify child support or to determine paternity. If the parents agree to the Title IV-D Standard Parenting Time Plan or to another parenting time plan, the plan must be signed by the parents and incorporated into the administrative order. If the parents do not agree to a Title IV-D Standard Parenting Time Plan or if an agreed-upon parenting time plan is not included, the Department of Revenue must enter an administrative support order and refer the parents to the court of appropriate jurisdiction to establish a parenting time plan. The department must note on the referral that an administrative support order has been entered. If a parenting

time plan is not included in the administrative support order entered pursuant to s. 409.2563, the department must provide information to the parents on the process to establish such a plan.

(2) The parent who owes support is entitled to parenting time with the child. If the parents do not have a signed, agreed-upon parenting time plan, the following Title IV-D Standard Parenting Time Plan must be incorporated into an administrative support order if agreed to and signed by the parents:

(a) Every other weekend.—The second and fourth full weekend of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The weekends may begin upon the child's release from school on Friday and end on Sunday at 6 p.m. or when the child returns to school on Monday morning. The weekend time may be extended by holidays that fall on Friday or Monday;

(b) One evening per week.—One weekday beginning at 6 p.m. and ending at 8 p.m. or, if both parents agree, from when the child is released from school until 8 p.m.;

(c) Thanksgiving break.—In even-numbered years, the Thanksgiving break from 6 p.m. on the Wednesday before Thanksgiving until 6 p.m. on the Sunday following Thanksgiving. If both parents agree, the Thanksgiving break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday;

(d) Winter break.—In odd-numbered years, the first half of winter break, from the child's release from school, beginning at 6 p.m. or, if both parents agree, upon the child's release from school, until noon on December 26. In even-numbered years, the

second half of winter break from noon on December 26 until 6 p.m. on the day before school resumes or, if both parents agree, upon the child's return to school;

(e) Spring break.—In even-numbered years, the week of spring break from 6 p.m. the day the child is released from school until 6 p.m. the night before school resumes. If both parents agree, the spring break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday; and

(f) Summer break.—For 2 weeks in the summer beginning at 6 p.m. the first Sunday following the last day of school.

(3) In the event the parents have not agreed on a parenting schedule at the time of the child support hearing, the department shall enter an administrative support order and refer the parents to a court of appropriate jurisdiction for the establishment of a parenting time plan.

(4) The Title IV-D Standard Parenting Time Plan is not intended for the use by, and may not be provided to, parents and families with domestic or family violence concerns.

(5) If, after the incorporation of an agreed-upon parenting time plan into an administrative support order, a parent becomes concerned about the safety of the child during the child's time with the other parent, a modification of the parenting time plan may be sought through a court of appropriate jurisdiction.

(6) The department shall create and provide a form for a petition to establish a parenting time plan for parents who have not agreed on a parenting schedule at the time of the child support hearing. The department shall provide the form to the parents, but may not file the petition or represent either

parent at the hearing.

(7) The parents may not be required to pay a fee to file the petition to establish a parenting plan.

(8) The department may adopt rules to implement and administer this section.

Section 6. Subsections (1) and (2) of section 409.2564, Florida Statutes, are amended to read:

409.2564 Actions for support.—

(1) In each case in which regular support payments are not being made as provided herein, the department shall institute, within 30 days after determination of the obligor's reasonable ability to pay, action as is necessary to secure the obligor's payment of current support, ~~and~~ any arrearage that ~~which~~ may have accrued under an existing order of support, and, if a parenting time plan was not incorporated into the existing order of support, include either a signed, agreed-upon parenting time plan or a signed Title IV-D Standard Parenting Time Plan, if appropriate. The department shall notify the program attorney in the judicial circuit in which the recipient resides setting forth the facts in the case, including the obligor's address, if known, and the public assistance case number. Whenever applicable, the procedures established under ~~the provisions of~~ chapter 88, Uniform Interstate Family Support Act, chapter 61, Dissolution of Marriage; Support; Time-sharing, chapter 39, Proceedings Relating to Children, chapter 984, Children and Families in Need of Services, and chapter 985, Delinquency; Interstate Compact on Juveniles, may govern actions instituted under ~~the provisions of~~ this act, except that actions for support under chapter 39, chapter 984, or chapter 985 brought

pursuant to this act shall not require any additional investigation or supervision by the department.

(2) The order for support entered pursuant to an action instituted by the department under ~~the provisions of~~ subsection (1) shall require that the support payments be made periodically to the department through the depository. An order for support entered under subsection (1) must include either a signed, agreed-upon parenting time plan or a signed Title IV-D Standard Parenting Time Plan, if appropriate. Upon receipt of a payment made by the obligor pursuant to any order of the court, the depository shall transmit the payment to the department within 2 working days, except those payments made by personal check which shall be disbursed in accordance with s. 61.181. Upon request, the depository shall furnish to the department a certified statement of all payments made by the obligor. Such statement shall be provided by the depository at no cost to the department.

Section 7. Paragraph (g) of subsection (2) and paragraph (a) of subsection (4) of section 409.256, Florida Statutes, are amended to read:

409.256 Administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing.—

(2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO THE COURTS.—

(g) Section 409.2563(2)(h), (i), and (j) ~~409.2563(2)(e), (f), and (g)~~ apply to a proceeding under this section.

(4) NOTICE OF PROCEEDING TO ESTABLISH PATERNITY OR PATERNITY AND CHILD SUPPORT; ORDER TO APPEAR FOR GENETIC

TESTING; MANNER OF SERVICE; CONTENTS.—The Department of Revenue shall commence a proceeding to determine paternity, or a proceeding to determine both paternity and child support, by serving the respondent with a notice as provided in this section. An order to appear for genetic testing may be served at the same time as a notice of the proceeding or may be served separately. A copy of the affidavit or written declaration upon which the proceeding is based shall be provided to the respondent when notice is served. A notice or order to appear for genetic testing shall be served by certified mail, restricted delivery, return receipt requested, or in accordance with the requirements for service of process in a civil action. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. For purposes of this section, an employee or an authorized agent of the department may serve the notice or order to appear for genetic testing and execute an affidavit of service. The department may serve an order to appear for genetic testing on a caregiver. The department shall provide a copy of the notice or order to appear by regular mail

to the mother and caregiver, if they are not respondents.

(a) A notice of proceeding to establish paternity must state:

1. That the department has commenced an administrative proceeding to establish whether the putative father is the biological father of the child named in the notice.

2. The name and date of birth of the child and the name of the child's mother.

3. That the putative father has been named in an affidavit or written declaration that states the putative father is or may be the child's biological father.

4. That the respondent is required to submit to genetic testing.

5. That genetic testing will establish either a high degree of probability that the putative father is the biological father of the child or that the putative father cannot be the biological father of the child.

6. That if the results of the genetic test do not indicate a statistical probability of paternity that equals or exceeds 99 percent, the paternity proceeding in connection with that child shall cease unless a second or subsequent test is required.

7. That if the results of the genetic test indicate a statistical probability of paternity that equals or exceeds 99 percent, the department may:

a. Issue a proposed order of paternity that the respondent may consent to or contest at an administrative hearing; or

b. Commence a proceeding, as provided in s. 409.2563, to establish an administrative support order for the child. Notice of the proceeding shall be provided to the respondent by regular

mail.

8. That, if the genetic test results indicate a statistical probability of paternity that equals or exceeds 99 percent and a proceeding to establish an administrative support order is commenced, the department shall issue a proposed order that addresses paternity and child support. The respondent may consent to or contest the proposed order at an administrative hearing.

9. That if a proposed order of paternity or proposed order of both paternity and child support is not contested, the department shall adopt the proposed order and render a final order that establishes paternity and, if appropriate, an administrative support order for the child.

10. That, until the proceeding is ended, the respondent shall notify the department in writing of any change in the respondent's mailing address and that the respondent shall be deemed to have received any subsequent order, notice, or other paper mailed to the most recent address provided or, if a more recent address is not provided, to the address at which the respondent was served, and that this requirement continues if the department renders a final order that establishes paternity and a support order for the child.

11. That the respondent may file an action in circuit court for a determination of paternity, child support obligations, or both.

12. That if the respondent files an action in circuit court and serves the department with a copy of the petition or complaint within 20 days after being served notice under this subsection, the administrative process ends without prejudice

and the action must proceed in circuit court.

13. That, if paternity is established, the putative father may file a petition in circuit court for a determination of matters relating to custody and rights of parental contact.

A notice under this paragraph must also notify the respondent of the provisions in s. 409.2563(4)(n) and (p) ~~s. 409.2563(4)(m) and (o)~~.

Section 8. Subsection (5) of section 409.2572, Florida Statutes, is amended to read:

409.2572 Cooperation.—

(5) As used in this section only, the term "applicant for or recipient of public assistance for a dependent child" refers to such applicants and recipients of public assistance as defined in s. 409.2554(12) ~~s. 409.2554(8)~~, with the exception of applicants for or recipients of Medicaid solely for the benefit of a dependent child.

Section 9. The Department of Revenue shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2018, on the status of the implementation of this act, including the number of parenting plans entered with administrative support orders and the number of parents referred to the circuit court to determine a parenting plan. The report must include recommendations to facilitate further implementation of this act.

Section 10. For the 2017-2018 fiscal year, the sums of $350,476 in recurring funds and $690,650 in nonrecurring funds are appropriated from the General Revenue Fund to the Department of Revenue for the purpose of implementing this act.

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576-03834-17

Section 11. This act shall take effect January 1, 2018.

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 590
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Judiciary Committee; and Senator Brandes and others
SUBJECT:	Child Support and Parenting Time Plans
DATE:	April 27, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Favorable**
2.	Stallard	Cibula	JU	**Fav/CS**
3.	Blizzard	Betta	AGG	**Recommend: Fav/CS**
4.	Blizzard	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 590 authorizes the Department of Revenue (department) to establish parenting time plans agreed to by both parents in Title IV-D child support actions. The department will be required to provide parents Title IV-D Parenting Time Plans with a proposed administrative support order. The bill creates a standard Title IV-D Parenting Time Plan that may be used by parents. In the event the parents cannot agree on a parenting time plan, they will be referred to the circuit court for the establishment of a plan. In these instances, parents will not pay a fee to file a petition to determine a parenting time plan. The bill also requires the enforcement or modification of an established parenting time plan to be sought through a court of appropriate jurisdiction.

The bill has a significant impact on the Department of Revenue and appropriates $1,041,126 from the General Revenue Fund to the department to carry out the provisions of the bill. The bill has an indeterminate impact on the workload of the state court system. See Section V.

The bill takes effect January 1, 2018.

II. Present Situation:

Chapter 61, F.S., addresses the issues of dissolution of marriage, child support, and parenting time plans. In a dissolution of marriage, matters relating to the marriage are settled as part of the judicial proceeding or through the adoption of a marital settlement agreement. If the parties to the dissolution cannot agree then the circuit court has the jurisdiction to resolve outstanding issues.

The Legislature designated the Department of Revenue (department) as the state agency responsible for the administration of the child support enforcement program, Title IV-D of the Social Security Act, 42 USC. ss. 651 et seq.[1] As the state Title IV-D agency, the department has the authority to take actions to carry out the public policy of ensuring children are maintained from the resources of their parents to the extent possible. The department's authority includes, but is not limited to, the establishment of paternity or support obligations, as well as modifications, enforcement, and collection of support obligations.[2] According to the department's website, as of federal fiscal year 2014, the department collected $1.57 billion in child support whereby 98 percent went to the families. The remaining 2 percent reimbursed public assistance dollars. Additionally, $1.02 billion in child support was collected through income withholding from the parent's paycheck. For every dollar spent the child support program collects $5.75[3].

The Title IV-D program plays a critical role in assuring that parents who live apart from their children meet their financial obligations.[4] Child well-being is improved by positive and consistent emotional and financial support from both parents.[5] Engaged fathering significantly enhances children's social, cognitive, and academic behavior in a positive manner.[6]

There is no systematic, efficient mechanism for families to establish parenting time agreements for children whose parents were not married at the time of their birth.[7] While divorcing parents often establish parenting time agreements as part of the divorce proceedings in circuit court, child support systems require unmarried parents to participate in multiple, often overlapping, legal proceedings in order to resolve issues of child support and parenting time.[8] Addressing both the calculation of child support and the amount of parenting time as part of the same process increases efficiency and reduces the burdens on parents of being involved in multiple administrative or judicial processes. A structured, formal approach to parenting time helps both parents manage their co-parenting relationship and reduce conflict, ambiguity, unpredictability about parenting time arrangements, and may increase child support compliance.[9]

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[1] s. 409.2557(1), F.S.
[2] section 409.2557(2), F.S.
[3] Florida Department of Revenue, Child Support Enforcement website, *available at* http://floridarevenue.com/dor/childsupport/pdf/cs1001x.pdf and last visited March 1, 2017.
[4] U.S. Department of Health and Human Services, Administration for Children & Families, *Promoting Child Well-Being & Family Self-Sufficiency, Child Support and Parenting Time: Improving Coordination to Benefit Children*, Child Support Fact Sheet Series, Number 13, on file with the Senate Committee on Children, Families & Elder Affairs.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.* at page 2.
[9] *Id.*

A handful of states or jurisdictions (Michigan, Texas, Orange County, California, Hennepin County, Minnesota) have child support initiatives that incorporate parenting time agreements into initial child support orders, many focusing on parenting agreements where the parents already agree on the division of time.[10] Texas is the most standardized, statewide program incorporating parenting time agreements into child support orders.[11] The Texas Family Code requires that a final order that stems from a suit affecting a parent-child relationship must include a parenting plan.[12] Unlike other states, Texas provides a statutory "standard possession order" that is presumed to provide a noncustodial parent with reasonable minimum time with his or her child and to be in the best interest of the child.[13]

In 1989, the Texas Legislature moved forward with not only the required child support guidelines as required by the federal government, but also with statutory presumptive visitation guidelines in the form of a standard order.[14] If there is a history of domestic violence or sexual abuse, the standard possession order may be inapplicable. The court must consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a noncustodial parent.[15]

In the initial creation of the Title IV-D program, the United States Congress provided financial subsidies for the operation of state Title IV-D programs through financial incentives based on support collections. Because the activities that are eligible for federal funding are limited to those required to establish paternity, establish and enforce child support obligations, collect and distribute payment, and locate absent parents, most states have taken the position that child support orders obtained or issued by IV-D programs not include provisions regarding parenting time, at the risk of jeopardizing federal funding for their programs.[16]

Texas has managed to include parenting plans in its support order for the last 30 years by maintaining that the cost of establishing a visitation order, coinciding with the establishment of paternity and/or a support obligation is a reasonable and minimal expense that must be incurred as part of the support order establishment process. Texas has argued that its success is based on:

- The existence in Texas law of the standard possession order,
- Simple child support guidelines,
- Agency policies and practices with dealing with cases where any dispute regarding parenting time, and
- The agency's successful public educational and outreach activities.[17]

The Texas Office of Attorney General (the Title IV-D agency in Texas) has adopted policies and practices to make the visitation order establishment process highly efficient. The agency is not

[10] *Id*.
[11] *Id* at page 3.
[12] Alicia G. Key, *Parenting Time in Texas Child Support Cases*, Family Court Review. Vol 53 No. 2, April 2015 258-266, on filed with the Senate Committee on Children, Families & Elder Affairs.
[13] See Tex. Fam. Code Section 153.252 (West 2013).
[14] Key, *supra* note 4, at 111.
[15] Key, *supra* at 261.
[16] *See* 45 C.F.R., Section 304.20(b) (1982).
[17] Key, *supra* at 263.

involved in the resolution of any disputed possession issue between the parties. Disputed cases are referred to the appropriate trial court for a final resolution of visitation disputes.[18] However, the parties do not need to file additional pleadings or incur additional expense at the second hearing for a decision on the visitation issues that may be in dispute.[19]

In s. 409.2563, F.S., the legislative intent is clear that the jurisdiction of the circuit courts to hear and determine issues regarding child support were not limited. The intent was to provide the department with an alternative procedure to establish child support obligations in Title IV-D cases in a fair and expeditious manner when there is no court order of support.[20] The Legislature did not grant the department the jurisdiction to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity except as otherwise provided in statute, or award of or change of time-sharing.[21] In Title IV-D cases, if parents want to establish a shared parenting time schedule that is enforceable by the courts, they have to file a separate cause of action in the circuit court.

III. Effect of Proposed Changes:

Section 1 amends s. 409.2551, F.S., to provide that it is the public policy of the state to encourage frequent contact between child and each parent.

Section 2 amends s. 409.2554, F.S., to provide definitions for "State Case Registry," "State Disbursement Unit," and "Title IV-D Standard Parenting Time Plans."

Section 3 amends s. 409.2557, F.S., to provide the department the authority to establish Title IV-D Standard Parenting Time Plans or any other parenting time plan agreed to and signed by the parents.

Section 4 amends s. 409.2563, F.S., to allow the department to establish parenting time plans only if the parents are in agreement. This section also provides that, if the parents do not have a parenting time plan and do not agree to a Title IV-D Standard Parenting Time Plan, a time plan will not be included in the initial administrative order setting child support. A statement explaining the absence of the parenting time plan will be included with the initial administrative order setting child support.

Any notifications by the department to parents will not include a Title IV-D Standard Parenting Time Plan if Florida is not the child's home state or one parent does not reside in Florida. The Title IV-D Standard Parenting Time Plan is not intended for use by and shall not be provided to either parent if there is a request for nondisclosure due to domestic or family violence, or if the parent who owes child support is incarcerated.

The bill also provides that if both parents have agreed to a parenting time plan before the administrative support order is established, the plan will be incorporated into the administrative support order. However, the department does not have the jurisdiction to enforce any parenting

[18] See Tex. Fam. Code Section 201.007(b)
[19] Key, *supra* at 263.
[20] section 409.2568(2)(a), F.S.
[21] section 409.2568(2)(b), F.S.

time plan that is incorporated into an administrative support order. When the department provides notice of proceeding to establish an administrative support order it must include a copy of the Title IV-D Standard Parenting Time Plan. Copies of proposed administrative support orders provided to parents will include a copy of the Title IV-D Standard Parenting Time Plan, along with other required documents. If a hearing is held, an administrative support order will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents.

Section 5 creates s. 409.25633, F.S., to provide that a Title IV-D Standard Parenting Time Plan must be included in any administrative action to establish child support taken by the department if the parents agree to and sign the plan. If there is no agreement as to a parenting time plan, then the department must enter an administrative order for child support and refer the parents to a court of appropriate jurisdiction to establish a parenting time plan. The department must also develop a form petition and provide information to the parents on the process to establish such plan. Additionally, a modification or enforcement of an established parenting time plan may be sought through a court of appropriate jurisdiction, after the plan is incorporated into an administrative order.

This section also creates a Title IV-D Standard Parenting Time Plan that will be presented to parents in an administrative child support action. The agreed upon parenting time plan is to be in the best interest of the child and special consideration should be given to the age and needs of each child. There is no presumption for or against the father or mother of the child or against any specific time-sharing schedule when a parenting time plan is created. The Title IV-D Standard Parenting Time Plans are not intended for use by and shall not be provided to parents and families with domestic or family violence concerns.

The department is directed to create and provide a form for a petition to establish a parenting time plan for parents who have not agreed to a parenting schedule at the time of the child support hearing. The department will provide the form to the parents but will not file the petition or represent either parent at a hearing to establish parenting time. The parents will not be required to pay a fee to file the petition to establish a parenting time plan.

Section 6 amends s. 409.2564, F.S., to provide that when the department institutes an action to secure the payment of current support or any arrearage that may have accrued under an existing order of support, and a parenting time plan was not incorporated into the existing order of support and is appropriate, the department will include either a parenting time plan or Title IV-D Standard Parenting Time Plan that has been agreed to and signed by the parents.

Section 7 amends s. 409.256, F.S., to correct cross-references.

Section 8 amends s. 409.2572, F.S., to correct cross-references.

Section 9 directs the Department of Revenue to report to the Governor, the President of the Senate and the Speaker of the House of Representatives by December 31, 2018, on:

- The status of the implementation of this act;
- The number of parenting plans that were entered into with the administrative child support orders;

- The number of parents that were referred to circuit court for the establishment of parenting time plans; and
- Any recommendations the department may have to further implement this act.

Section 10 provides an appropriation to the Department of Revenue of $690,650 in nonrecurring general revenue and $350,476 in recurring general revenue for the 2017-2018 fiscal year to implement the provisions in the bill.

Section 11 provides an effective date of January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill provides what appears to be a simple and cost-effective means of determining parenting time plans to separated or never-married parents who generally have a low income. If the parents can agree on the standard parenting time plan or another parenting time plan, they will not need to proceed in circuit court and incur the related costs to acquire a parenting time order.

C. Government Sector Impact:

The bill appropriates $1,041,126 from the General Revenue Fund to the Department of Revenue (department) for Fiscal Year 2017-2018. Of that amount, $690,650 in nonrecurring general revenue is appropriated to update the department's Child Support Automated Management System to meet new requirements, and $350,476 in recurring general revenue is appropriated to develop and deploy new forms, notices, procedures, and training.

The impact on the workload of the state court system is indeterminate but is expected to be insignificant. The bill waives the filing fee for parents who go through the Title IV-D administrative action but cannot agree on a parenting time plan, and who then proceed in circuit court. Currently, the parent who files an action in circuit court presumably must pay the filing fee. However, the number of these cases currently filed each year, as well as the number that will be filed under the bill, is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.2551, 409.2554, 409.2557, 409.2563, 409.2564, 409.256, and 409.2572.

This bill creates section 409.25633 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 25, 2017:
The bill:

- Clarifies that parents must agree to and sign any parenting time plan that will be incorporated into an administrative child support order.
- Requires the enforcement or modification of an established parenting time plan to be sought through a court of appropriate jurisdiction.
- Removes the reference to separate parenting time plans for children under the age of three and removes the reference for Title IV-D Standard Parenting Time Plan for parents that live more than 100 miles of each other.
- Clarifies that the Title IV-D Standard Parenting Time Plan is not for the use by and will not be provided to parents and families with domestic or family violence concerns.
- Directs the department to report to the Governor, the President of the Senate and the Speaker of the House of Representatives by December 31, 2018, on:
  - The status of implementation of this act;
  - The number of parenting plans that were entered into with the administrative child support orders;
  - The number of parents that were referred to circuit court for the establishment of parenting time plans; and
  - Any recommendations the department may have to further implement this act.

- Provides an appropriation of $1,041,126 from the General Revenue Fund to the department to implement the provisions in this act.

CS by Judiciary on March 28, 2017:
Clarifies that the parents in a Title IV-D action to determine paternity or to establish or modify child support must be presented with a Title IV-D Standard Parenting Time Plan, and that the standard plan or another parenting time plan must be incorporated in the administrative order resulting from the action if the parents agree to one of the plans.

B. Amendments:

None.

By the Committee on Judiciary; and Senators Brandes, Stargel, and Gibson

590-02996-17 2017590c1

A bill to be entitled

An act relating to child support and parenting time plans; amending s. 409.2551, F.S.; stating legislative intent to encourage frequent contact between a child and each parent; amending s. 409.2554, F.S.; defining terms; amending s. 409.2557, F.S.; authorizing the Department of Revenue to establish parenting time plans agreed to by both parents in Title IV-D child support actions; amending s. 409.2563, F.S.; requiring the department to mail Title IV-D Standard Parenting Time Plans with proposed administrative support orders; providing requirements for including parenting time plans in certain administrative orders; creating s. 409.25633, F.S.; providing the purpose and requirements for Title IV-D Standard Parenting Time Plans; requiring the department to refer parents who do not agree on a parenting time plan to a circuit court; requiring the department to create and provide a form for a petition to establish a parenting time plan under certain circumstances; specifying that the parents are not required to pay a fee to file the petition; authorizing the department to adopt rules; amending s. 409.2564, F.S.; authorizing the department to incorporate either an agreed-upon parenting time plan or a Title IV-D Standard Parenting Time Plan in a child support order; amending ss. 409.256 and 409.2572, F.S.; conforming cross-references; providing an appropriation; providing an effective date.

590-02996-17 2017590c1

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

Section 1. Section 409.2551, Florida Statutes, is amended to read:

409.2551 Legislative intent.—Common-law and statutory procedures governing the remedies for enforcement of support for financially dependent children by persons responsible for their support have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the Attorney General has resulted in a growing burden on the financial resources of the state, which is constrained to provide public assistance for basic maintenance requirements when parents fail to meet their primary obligations. The state, therefore, exercising its police and sovereign powers, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be augmented by additional remedies directed to the resources of the responsible parents. In order to render resources more immediately available to meet the needs of dependent children, it is the legislative intent that the remedies provided herein are in addition to, and not in lieu of, existing remedies. It is declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs. It is also the public policy of this state to encourage frequent contact between a child and each parent to optimize the development of a

close and continuing relationship between each parent and the child. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when a parenting time plan is created.

Section 2. Section 409.2554, Florida Statutes, is reordered and amended to read:

409.2554 Definitions; ss. 409.2551-409.2598.—As used in ss. 409.2551-409.2598, the term:

(5)~~(1)~~ "Department" means the Department of Revenue.

(6)~~(2)~~ "Dependent child" means any unemancipated person under the age of 18, any person under the age of 21 and still in school, or any person who is mentally or physically incapacitated when such incapacity began before ~~prior to~~ such person reaching the age of 18. This definition may ~~shall~~ not be construed to impose an obligation for child support beyond the child's attainment of majority except as imposed in s. 409.2561.

(3) "Court" means the circuit court.

(4) "Court order" means any judgment or order of any court of appropriate jurisdiction of the state, or an order of a court of competent jurisdiction of another state, ordering payment of a set or determinable amount of support money.

(7)~~(5)~~ "Health insurance" means coverage under a fee-for-service arrangement, health maintenance organization, or preferred provider organization, and other types of coverage available to either parent, under which medical services could be provided to a dependent child.

(8)~~(6)~~ "Obligee" means the person to whom support payments are made pursuant to an alimony or child support order.

(9)~~(7)~~ "Obligor" means a person who is responsible for

making support payments pursuant to an alimony or child support order.

(12)~~(8)~~ "Public assistance" means money assistance paid on the basis of Title IV-E and Title XIX of the Social Security Act, temporary cash assistance, or food assistance benefits received on behalf of a child under 18 years of age who has an absent parent.

(10)~~(9)~~ "Program attorney" means an attorney employed by the department, under contract with the department, or employed by a contractor of the department, to provide legal representation for the department in a proceeding related to the determination of paternity or the establishment, modification, or enforcement of support brought pursuant to law.

(11)~~(10)~~ "Prosecuting attorney" means any private attorney, county attorney, city attorney, state attorney, program attorney, or an attorney employed by an entity of a local political subdivision who engages in legal action related to the determination of paternity or the establishment, modification, or enforcement of support brought pursuant to this act.

(13) "State Case Registry" means the automated registry maintained by the Title IV-D agency, containing records of each Title IV-D case and of each support order established or modified in the state on or after October 1, 1998. Such records must consist of data elements as required by the United States Secretary of Health and Human Services.

(14) "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to

Title IV-D of the Social Security Act and in cases not being enforced by the department in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.

(16) "Title IV-D Standard Parenting Time Plan" means a document which may be agreed to by the parents to govern the relationship between the parents and to provide the parent who owes support a reasonable minimum amount of time with his or her child. The plans set forth in s. 409.25633 include timetables that specify the time, including overnights and holidays, that a minor child 3 years of age or older may spend with each parent.

(15)~~(11)~~ "Support," unless otherwise specified, means:

(a) Child support, and, when the child support obligation is being enforced by the Department of Revenue, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living.

(b) Child support only in cases not being enforced by the Department of Revenue.

(1)~~(12)~~ "Administrative costs" means any costs, including attorney's fees, clerk's filing fees, recording fees and other expenses incurred by the clerk of the circuit court, service of process fees, or mediation costs, incurred by the Title IV-D agency in its effort to administer the Title IV-D program. The administrative costs that ~~which~~ must be collected by the department shall be assessed on a case-by-case basis based upon a method for determining costs approved by the Federal Government. The administrative costs shall be assessed periodically by the department. The methodology for determining

administrative costs shall be made available to the judge or any party who requests it. Only those amounts ordered independent of current support, arrears, or past public assistance obligation shall be considered and applied toward administrative costs.

(2)~~(13)~~ "Child support services" includes any civil, criminal, or administrative action taken by the Title IV-D program to determine paternity, establish, modify, enforce, or collect support.

(17)~~(14)~~ "Undistributable collection" means a support payment received by the department which the department determines cannot be distributed to the final intended recipient.

(18)~~(15)~~ "Unidentifiable collection" means a payment received by the department for which a parent, depository or circuit civil numbers, or source of the payment cannot be identified.

Section 3. Subsection (2) of section 409.2557, Florida Statutes, is amended to read:

409.2557 State agency for administering child support enforcement program.—

(2) The department in its capacity as the state Title IV-D agency has ~~shall have~~ the authority to take actions necessary to carry out the public policy of ensuring that children are maintained from the resources of their parents to the extent possible. The department's authority includes ~~shall include~~, but is not ~~be~~ limited to, the establishment of paternity or support obligations, the establishment of a Title IV-D Standard Parenting Time Plan or any other parenting time plan agreed to by the parents, and ~~as well as~~ the modification, enforcement,

and collection of support obligations.

Section 4. Subsections (2), (4), (5), and (7) of section 409.2563, Florida Statutes, are amended to read:

409.2563 Administrative establishment of child support obligations.—

(2) PURPOSE AND SCOPE.—

(a) It is not the Legislature's intent to limit the jurisdiction of the circuit courts to hear and determine issues regarding child support or parenting time. This section is intended to provide the department with an alternative procedure for establishing child support obligations and establishing a parenting time plan only if the parents are in agreement, in Title IV-D cases in a fair and expeditious manner when there is no court order of support. The procedures in this section are effective throughout the state and shall be implemented statewide.

(b) If the parents do not have an existing time sharing schedule or parenting time plan and do not agree to a parenting time plan, a parenting time plan will not be included in the initial administrative order, only a statement explaining its absence.

(c) If the parents have a judicially established parenting time plan, the plan will not be included in the administrative or initial judicial order.

(d) Any notification provided by the department will not include Title IV-D Standard Parenting Time Plans if Florida is not the child's home state, when one parent does not reside in Florida, if either parent has requested nondisclosure for fear of harm from the other parent, or when the parent who owes

support is incarcerated.

(e)~~(b)~~ The administrative procedure set forth in this section concerns only the establishment of child support obligations and, if agreed to by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan. This section does not grant jurisdiction to the department or the Division of Administrative Hearings to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity, except for a determination of paternity as provided in s. 409.256, ~~or award of~~ or change of time-sharing. If both parents have agreed to a parenting time plan before the establishment of the administrative support order, the department or the Division of Administrative Hearings will incorporate the agreed-upon parenting time plan into the administrative support order. This paragraph notwithstanding, the department and the Division of Administrative Hearings may make findings of fact that are necessary for a proper determination of a parent's support obligation as authorized by this section.

(f)~~(c)~~ If there is no support order for a child in a Title IV-D case whose paternity has been established or is presumed by law, or whose paternity is the subject of a proceeding under s. 409.256, the department may establish a parent's child support obligation pursuant to this section, s. 61.30, and other relevant provisions of state law. The administrative support order will include a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to by both parents. The parent's obligation determined by the department may include any obligation to pay retroactive support and any obligation to

provide for health care for a child, whether through insurance coverage, reimbursement of expenses, or both. The department may proceed on behalf of:

1. An applicant or recipient of public assistance, as provided by ss. 409.2561 and 409.2567;

2. A former recipient of public assistance, as provided by s. 409.2569;

3. An individual who has applied for services as provided by s. 409.2567;

4. Itself or the child, as provided by s. 409.2561; or

5. A state or local government of another state, as provided by chapter 88.

(g) ~~(d)~~ Either parent, or a caregiver if applicable, may at any time file a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any. A support order issued by a circuit court prospectively supersedes an administrative support order rendered by the department.

(h) ~~(c)~~ Pursuant to paragraph (e) ~~(b)~~, neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact. The department or the Division of Administrative Hearings will incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to by both parents into the administrative support order. Either parent may at any time file a civil action in a circuit having jurisdiction and proper venue for a determination of child custody and rights of parental contact.

(i) ~~(f)~~ The department shall terminate the administrative

proceeding and file an action in circuit court to determine support if within 20 days after receipt of the initial notice the parent from whom support is being sought requests in writing that the department proceed in circuit court or states in writing his or her intention to address issues concerning time-sharing or rights to parental contact in court and if within 10 days after receipt of the department's petition and waiver of service the parent from whom support is being sought signs and returns the waiver of service form to the department.

(j) ~~(g)~~ The notices and orders issued by the department under this section shall be written clearly and plainly.

(4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE SUPPORT ORDER.—To commence a proceeding under this section, the department shall provide to the parent from whom support is not being sought and serve the parent from whom support is being sought with a notice of proceeding to establish administrative support order, a copy of the Title IV-D Standard Parenting Time Plans, and a blank financial affidavit form. The notice must state:

(a) The names of both parents, the name of the caregiver, if any, and the name and date of birth of the child or children;

(b) That the department intends to establish an administrative support order as defined in this section;

(c) That the department will incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan, as agreed to by both parents, into the administrative support order;

(d) ~~(c)~~ That both parents must submit a completed financial affidavit to the department within 20 days after receiving the notice, as provided by paragraph (13)(a);

(e) ~~(d)~~ That both parents, or parent and caregiver if applicable, are required to furnish to the department information regarding their identities and locations, as provided by paragraph (13)(b);

(f) ~~(e)~~ That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses to ensure receipt of all subsequent pleadings, notices, and orders, as provided by paragraph (13)(c);

(g) ~~(f)~~ That the department will calculate support obligations based on the child support guidelines schedule in s. 61.30 and using all available information, as provided by paragraph (5)(a), and will incorporate such obligations into a proposed administrative support order;

(h) ~~(g)~~ That the department will send by regular mail to both parents, or parent and caregiver if applicable, a copy of the proposed administrative support order, the department's child support worksheet, and any financial affidavits submitted by a parent or prepared by the department;

(i) ~~(h)~~ That the parent from whom support is being sought may file a request for a hearing in writing within 20 days after the date of mailing or other service of the proposed administrative support order or will be deemed to have waived the right to request a hearing;

(j) ~~(i)~~ That if the parent from whom support is being sought does not file a timely request for hearing after service of the proposed administrative support order, the department will issue an administrative support order that incorporates the findings of the proposed administrative support order, and any agreed-

upon parenting time plan. The department will send by regular mail a copy of the administrative support order and any incorporated parenting time plan to both parents, or parent and caregiver if applicable;

(k) ~~(j)~~ That after an administrative support order is rendered incorporating any agreed-upon parenting time plan, the department will file a copy of the order with the clerk of the circuit court;

(l) ~~(k)~~ That after an administrative support order is rendered, the department may enforce the administrative support order by any lawful means. The department does not have jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order;

(m) ~~(l)~~ That either parent, or caregiver if applicable, may file at any time a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any, and that a support order issued by a circuit court supersedes an administrative support order rendered by the department;

(n) ~~(m)~~ That neither the department nor the Division of Administrative Hearings has jurisdiction to ~~award or~~ change child custody or rights of parental contact or time-sharing, and these issues may be addressed only in circuit court. The department or the Division of Administrative Hearings may incorporate, if agreed to by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan when the administrative support order is established.

1. The parent from whom support is being sought may request in writing that the department proceed in circuit court to

determine his or her support obligations.

2. The parent from whom support is being sought may state in writing to the department his or her intention to address issues concerning custody or rights to parental contact in circuit court.

3. If the parent from whom support is being sought submits the request authorized in subparagraph 1., or the statement authorized in subparagraph 2. to the department within 20 days after the receipt of the initial notice, the department shall file a petition in circuit court for the determination of the parent's child support obligations, and shall send to the parent from whom support is being sought a copy of its petition, a notice of commencement of action, and a request for waiver of service of process as provided in the Florida Rules of Civil Procedure.

4. If, within 10 days after receipt of the department's petition and waiver of service, the parent from whom support is being sought signs and returns the waiver of service form to the department, the department shall terminate the administrative proceeding without prejudice and proceed in circuit court.

5. In any circuit court action filed by the department pursuant to this paragraph or filed by a parent from whom support is being sought or other person pursuant to paragraph (m) ~~(l)~~ or paragraph (o) ~~(n)~~, the department shall be a party only with respect to those issues of support allowed and reimbursable under Title IV-D of the Social Security Act. It is the responsibility of the parent from whom support is being sought or other person to take the necessary steps to present other issues for the court to consider; ~~.~~

(o) ~~(n)~~ That if the parent from whom support is being sought files an action in circuit court and serves the department with a copy of the petition within 20 days after being served notice under this subsection, the administrative process ends without prejudice and the action must proceed in circuit court;

(p) ~~(o)~~ Information provided by the Office of State Courts Administrator concerning the availability and location of self-help programs for those who wish to file an action in circuit court but who cannot afford an attorney.

The department may serve the notice of proceeding to establish an administrative support order and Title IV-D Standard Parenting Time Plans by certified mail, restricted delivery, return receipt requested. Alternatively, the department may serve the notice by any means permitted for service of process in a civil action. For purposes of this section, an authorized employee of the department may serve the notice and execute an affidavit of service. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. The department shall

provide the parent from whom support is not being sought or the caregiver with a copy of the notice by regular mail to the last known address of the parent from whom support is not being sought or caregiver.

(5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

(a) After serving notice upon a parent in accordance with subsection (4), the department shall calculate that parent's child support obligation under the child support guidelines schedule as provided by s. 61.30, based on any timely financial affidavits received and other information available to the department. If either parent fails to comply with the requirement to furnish a financial affidavit, the department may proceed on the basis of information available from any source, if such information is sufficiently reliable and detailed to allow calculation of guideline schedule amounts under s. 61.30. If a parent receives public assistance and fails to submit a financial affidavit, the department may submit a financial affidavit or written declaration for that parent pursuant to s. 61.30(15). If there is a lack of sufficient reliable information concerning a parent's actual earnings for a current or past period, it shall be presumed for the purpose of establishing a support obligation that the parent had an earning capacity equal to the federal minimum wage during the applicable period.

(b) The department shall send by regular mail to both parents, or to a parent and caregiver if applicable, copies of the proposed administrative support order, a copy of the Title IV-D Standard Parenting Time Plans, its completed child support worksheet, and any financial affidavits submitted by a parent or prepared by the department. The proposed administrative support

order must contain the same elements as required for an administrative support order under paragraph (7)(e).

(c) The department shall provide a notice of rights with the proposed administrative support order, which notice must inform the parent from whom support is being sought that:

1. The parent from whom support is being sought may, within 20 days after the date of mailing or other service of the proposed administrative support order, request a hearing by filing a written request for hearing in a form and manner specified by the department;

2. If the parent from whom support is being sought files a timely request for a hearing, the case shall be transferred to the Division of Administrative Hearings, which shall conduct further proceedings and may enter an administrative support order;

3. A parent from whom support is being sought who fails to file a timely request for a hearing shall be deemed to have waived the right to a hearing, and the department may render an administrative support order pursuant to paragraph (7)(b);

4. The parent from whom support is being sought may consent in writing to entry of an administrative support order without a hearing;

5. The parent from whom support is being sought may, within 10 days after the date of mailing or other service of the proposed administrative support order, contact a department representative, at the address or telephone number specified in the notice, to informally discuss the proposed administrative support order and, if informal discussions are requested timely, the time for requesting a hearing will be extended until 10 days

after the department notifies the parent that the informal discussions have been concluded; and

6. If an administrative support order that establishes a parent's support obligation and incorporates either a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents is rendered, whether after a hearing or without a hearing, the department may enforce the administrative support order by any lawful means. The department does not have the jurisdiction or authority to enforce a parenting time plan.

(d) If, after serving the proposed administrative support order but before a final administrative support order is rendered, the department receives additional information that makes it necessary to amend the proposed administrative support order, it shall prepare an amended proposed administrative support order, with accompanying amended child support worksheets and other material necessary to explain the changes, and follow the same procedures set forth in paragraphs (b) and (c).

(7) ADMINISTRATIVE SUPPORT ORDER.—

(a) If a hearing is held, the administrative law judge of the Division of Administrative Hearings shall issue an administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents, or a final order denying an administrative support order, which constitutes final agency action by the department. The Division of Administrative Hearings shall transmit any such order to the department for filing and rendering.

(b) If the parent from whom support is being sought does not file a timely request for a hearing, the parent will be

deemed to have waived the right to request a hearing.

(c) If the parent from whom support is being sought waives the right to a hearing, or consents in writing to the entry of an order without a hearing, the department may render an administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents.

(d) The department shall send by regular mail a copy of the administrative support order that will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents, or the final order denying an administrative support order, to both parents, or a parent and caregiver if applicable. The parent from whom support is being sought shall be notified of the right to seek judicial review of the administrative support order in accordance with s. 120.68.

(e) An administrative support order must comply with ss. 61.13(1) and 61.30. The department shall develop a standard form or forms for administrative support orders. An administrative support order must provide and state findings, if applicable, concerning:

1. The full name and date of birth of the child or children;

2. The name of the parent from whom support is being sought and the other parent or caregiver;

3. The parent's duty and ability to provide support;

4. The amount of the parent's monthly support obligation;

5. Any obligation to pay retroactive support;

6. The parent's obligation to provide for the health care needs of each child, whether through health insurance,

contribution toward the cost of health insurance, payment or reimbursement of health care expenses for the child, or any combination thereof;

7. The beginning date of any required monthly payments and health insurance;

8. That all support payments ordered must be paid to the ~~Florida~~ State Disbursement Unit as provided by s. 61.1824;

9. That the parents, or caregiver if applicable, must file with the department when the administrative support order is rendered, if they have not already done so, and update as appropriate the information required pursuant to paragraph (13)(b);

10. That both parents, or parent and caregiver if applicable, are required to promptly notify the department of any change in their mailing addresses pursuant to paragraph (13)(c); and

11. That if the parent ordered to pay support receives reemployment assistance or unemployment compensation benefits, the payor shall withhold, and transmit to the department, 40 percent of the benefits for payment of support, not to exceed the amount owed.

An income deduction order as provided by s. 61.1301 must be incorporated into the administrative support order or, if not incorporated into the administrative support order, the department or the Division of Administrative Hearings shall render a separate income deduction order.

Section 5. Section 409.25633, Florida Statutes, is created to read:

409.25633. Title IV-D Standard Parenting Time Plans.—

(1) A Title IV-D Standard Parenting Time Plan must be presented to the parents in any administrative action taken by the Title IV-D program to establish or modify child support or to determine paternity. If the parents agree to the Title IV-D Standard Parenting Time Plan or to another parenting time plan, the plan must be incorporated into the administrative order. If the parents do not agree to a Title IV-D Standard Parenting Time Plan or if an agreed-upon parenting time plan is not included, the Department of Revenue must enter an administrative support order and refer the parents to the court of appropriate jurisdiction to establish a parenting time plan. The department must note on the referral that an administrative support order has been entered. If a parenting time plan is not included in the administrative support order entered under s. 409.2563, the department must provide information to the parents on the process to establish such plan.

(2) If the parents live within 100 miles of each other and the child is 3 years of age or older, the parent who owes support shall have parenting time with the child:

(a) *Every other weekend.*—The second and fourth full weekend of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The weekends may begin upon the child's release from school on Friday and end on Sunday at 6 p.m. or when the child returns to school on Monday morning. The weekend time may be extended by holidays that fall on Friday or Monday;

(b) *One evening per week.*—One weekday beginning at 6 p.m. and ending at 8 p.m. or if both parents agree, from when the child is released from school until 8 p.m.;

(c) *Thanksgiving break.*—In even-numbered years, the Thanksgiving break from 6 p.m. on the Wednesday before Thanksgiving until 6 p.m. on the Sunday following Thanksgiving. If both parents agree, the Thanksgiving break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday;

(d) *Winter break.*—In odd-numbered years, the first half of winter break, from the day school is released, beginning at 6 p.m. or, if both parents agree, upon the child's release from school, until noon on December 26. In even-numbered years, the second half of winter break from noon on December 26 until 6 p.m. on the day before school resumes or, if both parents agree, upon the child's return to school;

(e) *Spring break.*—In even-numbered years, the week of spring break from 6 p.m. the day that school is released until 6 p.m. the night before school resumes. If both parents agree, the spring break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday; and

(f) *Summer break.*—For 2 weeks in the summer beginning at 6 p.m. the first Sunday following the last day of school.

(3) If the parents live more than 100 miles from each other and the child is 3 years of age or older, the parties may agree to follow the schedule set forth in subsection (2), or else the parent who owes child support has parenting time with the child:

(a) *One weekend per month.*—The second or fourth full weekend of the month throughout the year beginning Friday at 6 p.m. through Sunday at 6 p.m. The parent who owes child support can choose the one weekend per month within 90 days after the

parents begin to live more than 100 miles apart; and

(b) *Summer break.*—Forty-two days of parenting time during the summer months. The parent who is owed child support will have parenting time one weekend beginning on Friday at 6 p.m. through Sunday at 6 p.m. during any one extended period during the summer.

(4) If the child is under 3 years of age, the parents may agree on a parenting time plan that includes more frequent visitation with shorter timeframes, gradually leading into overnight visits and either a parenting time plan agreed to by both parents or the Title IV-D Standard Parenting Time Plan set out in this section.

(5) In the event the parents have not agreed on a parenting schedule at the time of the child support hearing, the department will enter an administrative support order and refer the parents to a court of appropriate jurisdiction for the establishment of a parenting time plan.

(6) The Title IV-D Standard Parenting Time Plans are not intended for use by parents and families with domestic or family violence concerns.

(7) If after the incorporation of an agreed-upon parenting time plan into an administrative support order, a parent becomes concerned about the safety of the child during the child's time with the other parent, a modification of the parenting time plan may be sought through a court of appropriate jurisdiction.

(8) The department will create and provide a form for a petition to establish a parenting time plan for parents who have not agreed on a parenting schedule at the time of the child support hearing. The department will provide the form to the

parents but will not file the petition or represent either parent at the hearing.

(9) The parents will not be required to pay a fee to file the petition to establish a parenting plan.

(10) The department may adopt rules to implement and administer this section.

Section 6. Subsections (1) and (2) of section 409.2564, Florida Statutes, are amended to read:

409.2564 Actions for support.—

(1) In each case in which regular support payments are not being made as provided herein, the department shall institute, within 30 days after determination of the obligor's reasonable ability to pay, action as is necessary to secure the obligor's payment of current support, ~~and~~ any arrearage that ~~which~~ may have accrued under an existing order of support, and if a parenting time plan was not incorporated into the existing order of support and is appropriate, include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan. The department shall notify the program attorney in the judicial circuit in which the recipient resides setting forth the facts in the case, including the obligor's address, if known, and the public assistance case number. Whenever applicable, the procedures established under ~~the provisions of~~ chapter 88, Uniform Interstate Family Support Act, chapter 61, Dissolution of Marriage; Support; Time-sharing, chapter 39, Proceedings Relating to Children, chapter 984, Children and Families in Need of Services, and chapter 985, Delinquency; Interstate Compact on Juveniles, may govern actions instituted under ~~the provisions of~~ this act, except that actions for support under chapter 39,

chapter 984, or chapter 985 brought pursuant to this act shall not require any additional investigation or supervision by the department.

(2) The order for support entered pursuant to an action instituted by the department under ~~the provisions of~~ subsection (1) shall require that the support payments be made periodically to the department through the depository. An order for support entered under the provisions of subsection (1) must include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan, if appropriate. Upon receipt of a payment made by the obligor pursuant to any order of the court, the depository shall transmit the payment to the department within 2 working days, except those payments made by personal check which shall be disbursed in accordance with s. 61.181. Upon request, the depository shall furnish to the department a certified statement of all payments made by the obligor. Such statement shall be provided by the depository at no cost to the department.

Section 7. Paragraph (g) of subsection (2) and paragraph (a) of subsection (4) of section 409.256, Florida Statutes, are amended to read:

409.256 Administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing.—

(2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO THE COURTS.—

(g) Section 409.2563(2)(h), (i), and (j) ~~409.2563(2)(e), (f), and (g)~~ apply to a proceeding under this section.

(4) NOTICE OF PROCEEDING TO ESTABLISH PATERNITY OR

PATERNITY AND CHILD SUPPORT; ORDER TO APPEAR FOR GENETIC TESTING; MANNER OF SERVICE; CONTENTS.—The Department of Revenue shall commence a proceeding to determine paternity, or a proceeding to determine both paternity and child support, by serving the respondent with a notice as provided in this section. An order to appear for genetic testing may be served at the same time as a notice of the proceeding or may be served separately. A copy of the affidavit or written declaration upon which the proceeding is based shall be provided to the respondent when notice is served. A notice or order to appear for genetic testing shall be served by certified mail, restricted delivery, return receipt requested, or in accordance with the requirements for service of process in a civil action. Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally. For purposes of this section, an employee or an authorized agent of the department may serve the notice or order to appear for genetic testing and execute an affidavit of service. The department may serve an order to appear for genetic testing on a caregiver. The department shall

provide a copy of the notice or order to appear by regular mail to the mother and caregiver, if they are not respondents.

(a) A notice of proceeding to establish paternity must state:

1. That the department has commenced an administrative proceeding to establish whether the putative father is the biological father of the child named in the notice.

2. The name and date of birth of the child and the name of the child's mother.

3. That the putative father has been named in an affidavit or written declaration that states the putative father is or may be the child's biological father.

4. That the respondent is required to submit to genetic testing.

5. That genetic testing will establish either a high degree of probability that the putative father is the biological father of the child or that the putative father cannot be the biological father of the child.

6. That if the results of the genetic test do not indicate a statistical probability of paternity that equals or exceeds 99 percent, the paternity proceeding in connection with that child shall cease unless a second or subsequent test is required.

7. That if the results of the genetic test indicate a statistical probability of paternity that equals or exceeds 99 percent, the department may:

a. Issue a proposed order of paternity that the respondent may consent to or contest at an administrative hearing; or

b. Commence a proceeding, as provided in s. 409.2563, to establish an administrative support order for the child. Notice

of the proceeding shall be provided to the respondent by regular mail.

8. That, if the genetic test results indicate a statistical probability of paternity that equals or exceeds 99 percent and a proceeding to establish an administrative support order is commenced, the department shall issue a proposed order that addresses paternity and child support. The respondent may consent to or contest the proposed order at an administrative hearing.

9. That if a proposed order of paternity or proposed order of both paternity and child support is not contested, the department shall adopt the proposed order and render a final order that establishes paternity and, if appropriate, an administrative support order for the child.

10. That, until the proceeding is ended, the respondent shall notify the department in writing of any change in the respondent's mailing address and that the respondent shall be deemed to have received any subsequent order, notice, or other paper mailed to the most recent address provided or, if a more recent address is not provided, to the address at which the respondent was served, and that this requirement continues if the department renders a final order that establishes paternity and a support order for the child.

11. That the respondent may file an action in circuit court for a determination of paternity, child support obligations, or both.

12. That if the respondent files an action in circuit court and serves the department with a copy of the petition or complaint within 20 days after being served notice under this

subsection, the administrative process ends without prejudice and the action must proceed in circuit court.

13. That, if paternity is established, the putative father may file a petition in circuit court for a determination of matters relating to custody and rights of parental contact.

A notice under this paragraph must also notify the respondent of the provisions in s. 409.2563(4)(n) and (p) ~~s. 409.2563(4)(m) and (o)~~.

Section 8. Subsection (5) of section 409.2572, Florida Statutes, is amended to read:

409.2572 Cooperation.—

(5) As used in this section only, the term "applicant for or recipient of public assistance for a dependent child" refers to such applicants and recipients of public assistance as defined in s. 409.2554(12) ~~s. 409.2554(8)~~, with the exception of applicants for or recipients of Medicaid solely for the benefit of a dependent child.

Section 9. The sum of $419,520 in nonrecurring general revenue is appropriated for contracted services to the Department of Revenue for the fiscal year 2017-2018 for the purpose of implementing this act. The sum of $20,729 in recurring general revenue is appropriated for expenses, and the sum of $91,127 in recurring general revenue is appropriated for salaries and benefits to the Department of Revenue for the fiscal year 2017-2018 for the purpose of implementing this act.

Section 10. 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)

4/25/17
Meeting Date

SB 590
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 590

Name Mark Anderson

Job Title

Address 106 S. Monroe St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 813-705-0658

Email Mail@Consultlawyer.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Non Custodial Parent Employment Program

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)

4-25-17
Meeting Date

590
Bill Number (if applicable)

Topic Child Support and Parenting Time Plans
Amendment Barcode (if applicable)

Name Andrea

Job Title Attorney

Address 2300 Glades Rd Ste 203E
Street

Phone 561 361 8300

Boca Raton FL 33431
City *State* *Zip*

Email AReid@IsaacsReidlaw.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The Florida Bar Family Law Section

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/SB 406 (832708)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Bradley and others
SUBJECT:	Compassionate Use of Low-THC Cannabis and Marijuana
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Fournier/Loe	Williams	AHS	**Recommend: Fav/CS**
3.	Fournier/Loe	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 406 amends section 381.986, Florida Statutes, to implement the provisions of Article X, section 29 of the State Constitution, Medical Marijuana Production, Possession, and Use. The bill makes numerous changes to the section including:

- Adding legislative intent.
- Amending definitions to incorporate terms used in Article X, section 29 of the State Constitution, and to add definitions for "chronic nonmalignant pain" and "close relative."
- Allowing allopathic[1] and osteopathic[2] physicians to certify the medical use of marijuana for patients with debilitating medical conditions and other specified patients, including certain patients from other states who meet Florida requirements.
- Establishing requirements that a physician must meet before certifying a patient and after certification.
- Reducing the required course a physician must take prior to certifying patients to a 4-hour course that must be taken each time such physician renews his or her license.[3]
- Removing the three-month patient treatment prerequisite.
- Amending current criminal penalties to conform to other changes in the bill and establishing new criminal violations for patients and caregivers cultivating or purchasing marijuana from

[1] Licensed under ch. 458, F.S.
[2] Licensed under ch. 459, F.S.
[3] Section 381.986(4)(a), F.S., requires that physicians take an 8-hour course biannually.

a source other than a medical marijuana treatment center (MMTC) or who violate other provisions of the act.
- Prohibiting unlicensed activity and providing for criminal and financial penalties.
- Establishing requirements for caregivers including limiting a patient to one caregiver and a caregiver to one patient with certain exceptions, and requiring that caregivers pass a Level 2 background screening with certain exceptions for a caregiver who is a close relative.
- Provides that a nursing home or assisted living facility may not prevent a qualifying patient residing in the nursing home or assisted living facility from hiring a caregiver, but a nursing home or assisted living facility may prohibit its employees from acting as caregivers to residents of the nursing home or assisted living facility, and a nursing home or assisted living facility is not required to provide a caregiver to a resident who is a qualifying patient.
- Requiring the Department of Health (DOH) to begin issuing identification cards to patients and caregivers by October 3, 2017.
- Requiring the DOH to establish requirements for the licensure and certification of independent testing laboratories (ITL), a marijuana quality control program, and a seed-to-sale tracking program for marijuana.
- Grandfathering in existing dispensing organizations as MMTCs,[4] adding five MMTCs by October 3, 2017, and increasing the overall number of MMTCs that may be registered when certain numbers of patients are registered on the compassionate use registry.
- Requiring MMTCs to maintain compliance with the representations made in their applications for registration and allowing the DOH to grant variances in certain circumstances.
- Limiting each MMTC to no more than three dispensing facilities.
- Authorizing emergency rulemaking for implementation and timeframes for initiating nonemergency rulemaking.

The bill creates section 1004.4351, Florida Statutes, to establish the "Medical Marijuana Research and Education Act" and the Coalition for Medical Marijuana Research and Education within the H. Lee Moffitt Cancer Center and Research Institute, Inc.

The bill also makes other conforming and technical changes to sections 381.986, 381.987, 385.211, 499.0295, and 1004.411, Florida Statutes.

The fiscal impact of the bill is indeterminate. On April 7, 2017, the Revenue Estimating Conference estimated the bill has an indeterminate positive fiscal impact on state revenues.[5] The increased costs incurred by the DOH and the Florida Department of Law Enforcement (FDLE) should be offset by fees and fines authorized in the bill.

The bill is effective upon becoming a law.

[4] Including dispensing organizations that are currently in litigation but would qualify under ch. 2016-1236, L.O.F.
[5] Office of Economic and Demographic Research, *Revenue Estimating Impact Conference results for CS/SB 406, (April 7, 2017)* available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0407.pdf, pages 527-531 (last visited April 16, 2017).

II. Present Situation:

Treatment of Marijuana in Florida

Florida law defines cannabis as "all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin,"[6] and places it, along with other sources of tetrahydrocannabinol (THC), on the list of Schedule I controlled substances.[7] The definition excludes "low-THC cannabis" as defined in s. 381.986, F.S., if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with that section.

Schedule I controlled substances are substances that have a high potential for abuse and no currently accepted medical use in the United States.[8] As a Schedule I controlled substance, possession and trafficking of cannabis carry criminal penalties that vary from a first-degree misdemeanor[9] up to a first-degree felony with a mandatory minimum sentence of 15 years in state prison and a $200,000 fine.[10] Paraphernalia[11] that is sold, manufactured, used, or possessed with the intent to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, is also prohibited and carries criminal penalties ranging from a first degree misdemeanor to a third degree felony.[12]

Medical Marijuana in Florida: the Compassionate Medical Cannabis Act of 2014

Patient Treatment with Low-THC Cannabis

The Compassionate Medical Cannabis Act of 2014[13] (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)[14] for medical use[15] by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms. The act provides that a Florida

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[6] Section 893.02(3), F.S.
[7] Section 893.03(1)(c)7. and 37., F.S.
[8] Section 893.03(1), F.S.
[9] This penalty is applicable to possession or delivery of less than 20 grams of cannabis. *See* s. 893.13(3) and (6)(b), F.S.
[10] Trafficking in more than 25 pounds, or 300 plants, of cannabis is a first-degree felony with a mandatory minimum sentence that varies from three to 15 years in state prison depending on the quantity of the cannabis possessed, sold, etc. *See* s. 893.135(1)(a), F.S.
[11] Section 893.145, F.S.
[12] Section 893.147, F.S.
[13] Chapter 2014-157, Laws of Fla., codified in s. 381.986, F.S.
[14] Section 381.986(b), F.S., defines "low-THC cannabis," as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.
[15] Section 381.986(1)(c), F.S., defines "medical use" as administration of the ordered amount of low-THC cannabis; and the term does not include the possession, use, or administration by smoking, or the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative. Section 381.986(1)(e), F.S., defines "smoking" as burning or igniting a substance and inhaling the smoke; smoking does not include the use of a vaporizer.

licensed allopathic or osteopathic physician who has completed the required training[16] and has examined and is treating such a patient may order low-THC cannabis for that patient to treat such disease, disorder, or condition or to alleviate its symptoms, if no other satisfactory alternative treatment options exist for that patient. In order for a physician to order low-THC cannabis for a patient, all of the following conditions must apply:

- The patient is a permanent resident of Florida;
- The physician has treated the patient for at least 3 months immediately preceding the patient's registration and has determined that the risks of ordering low-THC cannabis are reasonable in light of the potential benefit for that patient;[17]
- The physician registers as the orderer of low-THC cannabis for the patient on the compassionate use registry (registry) maintained by the DOH and updates the registry to reflect the contents of the order;
- The physician maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the low-THC cannabis;
- The physician submits the patient treatment plan quarterly to the University of Florida, College of Pharmacy (UFCP) for research on the safety and efficacy of low-THC cannabis on patients; and
- The physician obtains the voluntary informed consent of the patient or the patient's legal guardian to treatment with low-THC cannabis after sufficiently explaining the current state of knowledge in the medical community about the effectiveness of treatment of the patient's condition with low-THC cannabis, the medically acceptable alternatives, and the potential risks and side effects.[18]

The act creates exceptions to existing law to allow qualified patients[19] and their legal representatives to purchase, acquire, and possess low-THC cannabis – up to the amount ordered – for that patient's medical use; and to allow dispensing organizations (DO) and their owners, managers, and employees to acquire, possess, cultivate, and dispose of excess product in reasonable quantities to produce low-THC cannabis and to possess, process, and dispense low-THC cannabis. The DOs and their owners, managers, and employees are not subject to licensure and regulation under ch. 465, F.S., relating to pharmacies.[20]

Patient Treatment with Medical Cannabis

Chapter 2016-123, Laws of Florida, amended the act to expand the regulatory structure relating to dispensing low-THC cannabis and authorized approved dispensing organizations to cultivate and dispense medical cannabis to eligible patients as defined under the Right to Try Act

[16] Section 381.986(4), F.S., requires such physicians to successfully complete an 8-hour course and examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association that encompasses the clinical indications for the appropriate use of low-THC cannabis, appropriate delivery mechanisms, contraindications for such use, and the state and federal laws governing its ordering, dispensing, and processing.
[17] If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record.
[18] Section 381.986(2), F.S.
[19] Section 381.986(1)(d), F.S., defines a "qualified patient" as a Florida resident who has been added by a physician licensed under ch. 458 or 459, F.S., to the compassionate use registry to receive low-THC cannabis from a DO.
[20] Section 381.986(7), F.S.

(RTTA).[21] In conjunction with s. 381.986, F.S., the RTTA allows physicians to treat eligible patients with terminal conditions with medical cannabis by including medical cannabis[22] within the definition of an investigational drug, biological product, or device. Physicians must order the use of medical cannabis for those patients pursuant to the provisions of s. 381.986, F.S.

Dispensing Organizations under the Act

Section 381.986, F.S., requires that the DOH approve five DOs, one in each of five regions throughout the state. In order to be approved as a DO, an applicant must possess a certificate of registration issued by the Department of Agriculture and Consumer Services (DACS) for the cultivation of more than 400,000 plants, be operated by a nurseryman, and have been operating as a registered nursery in this state for at least 30 continuous years. DOs must be vertically integrated, meaning the DO performs all stages in the production, processing, marketing, and retailing of low-THC and medical cannabis. Applicants are required to demonstrate:

- The technical and technological ability to cultivate and produce low-THC cannabis;
- The ability to secure the premises, resources, and personnel necessary to operate as a DO;
- The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances;
- An infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the DOH;
- The financial ability to maintain operations for the duration of the two year approval cycle, including the provision of certified financials to the DOH;
- That all owners and managers have been fingerprinted and have successfully passed a Level 2 background screening pursuant to s. 435.04, F.S; and
- The employment of a medical director, who must be a physician[23] and successfully completed a course and examination that encompasses appropriate safety procedures and knowledge of low-THC cannabis.[24]

An approved DO must post a $5 million performance bond within 10 business days of approval. The DOH is authorized to charge an initial application fee and a licensure renewal fee, but is not authorized to charge an initial licensure fee.[25] An approved DO must maintain all approval criteria at all times.[26]

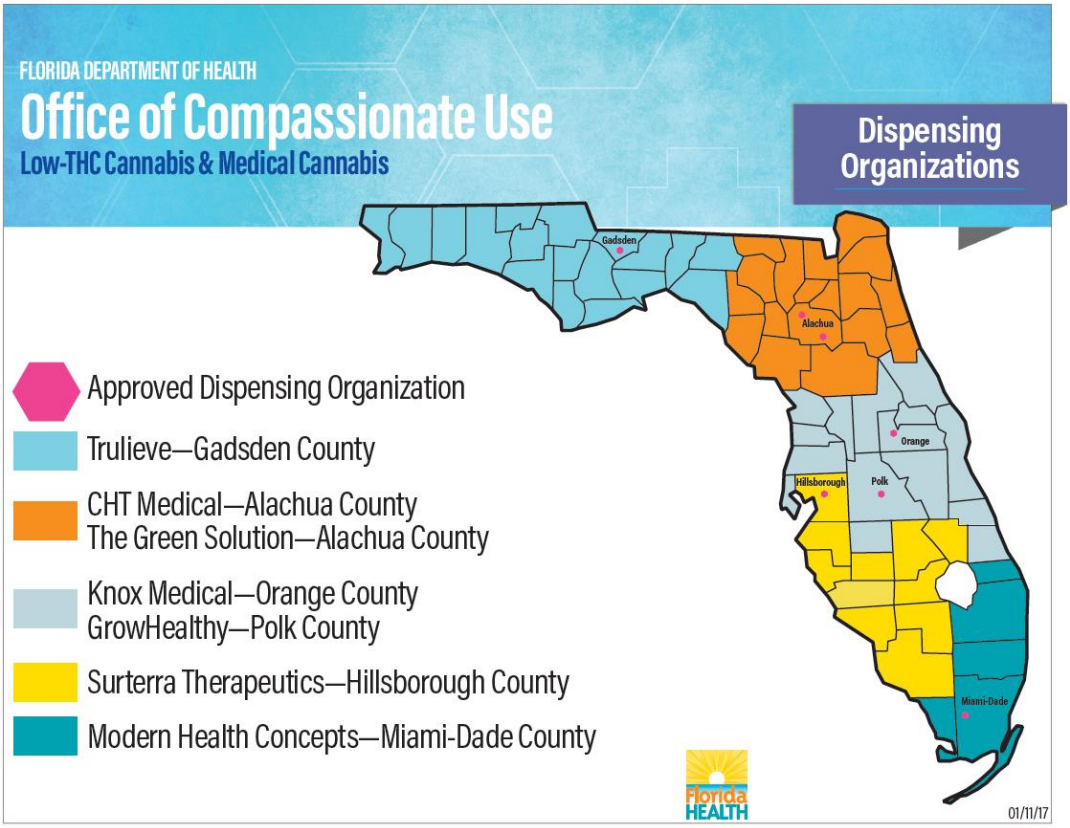
Beginning on July 7, 2014, the DOH held several rule workshops[27] to write and adopt rules implementing the provisions of s. 381.986, F.S., and the DOH put forward a proposed rule on September 9, 2014.[28] This proposed rule was challenged by multiple organizations involved in

[21] Section 499.0295, F.S.
[22] "Medical cannabis" means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a DO for medical use by an eligible patient as defined in the Right to Try Act.
[23] Licensed under ch. 458 or 459, F.S.
[24] *Id.*
[25] *Id.*
[26] Section 381.986(6), F.S.
[27] Audio recordings of the rule development workshops are available on the DOH website at: http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/resources/rulemaking/index.html (last visited Mar. 20, 2017).
[28] Proposed Rule ch. 64-4, F.A.C., ID 14941024, (Aug. 14, 2014) and changed, ID 15040352, (Sept. 9, 2014).

the rulemaking workshops and was found to be an invalid exercise of delegated legislative authority by an administrative law judge on November 14, 2014.[29] Afterward, the DOH held a negotiated rulemaking workshop in February of 2015, which resulted in a new proposed rule being published on February 6, 2015.[30] The new proposed rule was also challenged on, among other things, the DOH's statement of estimated regulatory costs and the DOH's conclusion that the rule will not require legislative ratification. Hearings were held on April 23 and 24, 2015, and a final order was issued on May 27, 2015, which found the rule to be valid.[31] The rule took effect June 17, 2015, and the DOH held an application period for DO approval which ended on July 8, 2015. Twenty-eight applications were submitted.[32]

On November 23, 2015, the DOH approved a DO in each of the following five regions as required by the act: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida.[33] Numerous petitions were filed challenging the DOH's selection process. In order to allow the approved DOs to begin dispensing products, the 2016 Legislature required the DOH to approve as a DO applicants that received the highest aggregate score through the DOH's evaluation process, notwithstanding any prior determination by the DOH that the applicant failed to meet the requirements of s. 381.986, F.S. The Legislature also provided that if the Division of Administrative Hearings, the DOH, or a court of competent jurisdiction makes a final determination that an applicant was entitled to be a DO, that both this DO and currently approved DOs may operate in the same region.[34] Currently, in addition to the five DOs originally approved, the DOH has since approved The Green Solution in Alachua County and Grow Health in Polk County. The following map depicts the currently approved DOs.

[29] Tornello Landscape Corp. v. DOH, Case No. 14-4547RP; Fl. Medical Cannabis Assoc. v. DOH, Case No. 14-4517RP; Plants of Ruskin, Inc. v. DOH, Case No. 14-4299RP; Costa Farms, LLC v. DOH, Case No. 14-4296RP (Fla. DOAH 2014). A copy of each Final Order is available on the Division of Administrative Hearings website.
[30] Proposed Rule ch. 64-4, F.A.C., ID 15645147, (Feb. 2, 2015).
[31] Baywood Nurseries Co., Inc. v. DOH, Case No. 15-1694RP (Fla. DOAH 2015).
[32] Information about the applications and the approved DOs is available on the DOH, Office of Compassionate Use, website, available at: http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/dispensing-organizations/dispensing-application-process/index.html (last visited Mar. 20, 2017).
[33] Section 381.986(5)(b), F.S. A map of the dispensing regions and approved dispensing organizations is available on the DOH website at: http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/_documents/ocu-dispensing-map.pdf (last visited Mar. 20, 2017).
[34] Chapter 2016-123, Laws of Fla.



In addition to the currently approved DOs, s. 381.986(5)(c), F.S., requires the DOH to approve three additional DOs upon the registration of 250,000 active qualified patients in the compassionate use registry. At least one of the newly approved DOs must be an applicant that is a recognized class member of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999), or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association. These additional applicants are not required to meet the requirement to possess a certificate of registration issued by the DACS for the cultivation of more than 400,000 plants, be operated by a nurseryman, and have been operating as a registered nursery in Florida for at least 30 continuous years.

The Compassionate Use Registry

The act requires the DOH to create a secure, electronic, and online registry for the registration of physicians and patients and for the verification of patient orders by DOs, which is accessible to law enforcement.[35] The registry must allow DOs to record the dispensing of low-THC cannabis, and must prevent an active registration of a patient by multiple physicians. Physicians must register qualified patients with the registry and DOs are required to verify that the patient has an active registration in the registry, that the order presented matches the order contents as recorded in the registry, and that the order has not already been filled before dispensing any low-THC cannabis. The DOs are also required to record in the registry the date, time, quantity, and form of low-THC cannabis dispensed.[36] The Compassionate Use Registry became operational on

[35] Section 381.986(5)(a), F.S.
[36] Section 381.986(6), F.S.

July 11, 2016.[37] As of the end of February 2017, there were 4,079 patients registered with the Compassionate Use Registry.[38]

The Office of Compassionate Use and Research on Low-THC Cannabis

The DOH was required to establish the Office of Compassionate Use under the direction of the deputy state health officer to administer the act.[39, 40]

The act includes several provisions related to research on low-THC cannabis and cannabidiol including:

- Requiring physicians to submit quarterly patient treatment plans to the UFCP for research on the safety and efficacy of low-THC cannabis;[41]
- Authorizing state universities to perform research on cannabidiol and low-THC cannabis and exempting them from the provisions in ch. 893, F.S., for the purposes of such research;[42] and
- Appropriating $1 million to the James and Esther King Biomedical Research Program for research on cannabidiol and its effects on intractable childhood epilepsy.[43]

Medical Marijuana in Florida: Amendment 2 (2016)

On November 4, 2016, Amendment 2 was voted into law and established Article X, section 29 of the State Constitution. This section of the constitution became effective on January 3, 2017, and creates several exemptions from criminal and civil liability for:

- Qualifying patients medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical Marijuana Treatment Centers (MMTCs), their agents, and employees for actions or conduct under the amendment and in compliance with DOH rules.

The constitution defines multiple terms including:

- "Qualifying patient" to mean a person who:
  - Has been diagnosed with a "debilitating medical condition;"

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[37] Office of Compassionate Use, *Implementation Timeline* (October 2016) *available at* http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/_documents/ocu-timeline.pdf, (last visited Mar. 21, 2017).
[38] Revenue Estimating Conference, *Use of Marijuana for Debilitating Medical Conditions* (March 2, 2017), p. 3, (on file with the Senate Committee on Health Policy).
[39] Section 385.212, F.S.
[40] The Office of Compassionate Use is authorized to enhance access to investigational new drugs for Florida patients through approved clinical treatment plans or studies by: creating a network of state universities and medical centers recognized for demonstrating excellence in patient-centered coordinated care for persons undergoing cancer treatment and therapy in this state; making any necessary application to the U.S. Food and Drug Administration (FDA) or a pharmaceutical manufacturer to facilitate enhanced access to compassionate use for Florida patients; and entering into agreements necessary to facilitate enhanced access to compassionate use for Florida patients. *See* ss. 381.925 and 385.212, F.S.
[41] Section 381.986(2)(e), F.S.
[42] Section 385.211, F.S.
[43] Chapter 2014-157, Laws of Fla. The DOH and the University of Florida executed a contract (ID 5EP01) on June 5, 2015, and $483,334 of the $1 million grant award has been spent. Florida Accountability Contract Tracking System (FACTS). *Available at:* https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=640000&ContractId=5EP01. (last visited April 16, 2017).

  - Has a "physician certification;" and
  - Has a valid qualifying patient identification card issued by the DOH.
  - In the case of a minor patient, must also have the consent of a parent or legal guardian prior to both obtaining a physician certification and obtaining an identification card from the DOH.[44]
- "Debilitating Medical Condition" to mean:
  - Cancer;
  - Epilepsy;
  - Glaucoma;
  - HIV/AIDS;
  - Post-Traumatic Stress Disorder (PTSD);
  - Amyotrophic lateral sclerosis (ALS);
  - Crohn's Disease;
  - Parkinson's Disease;
  - Multiple Sclerosis; or
  - Another debilitating medical condition of the same kind or class as, or comparable to, the enumerated conditions.
  - Additionally, a physician must believe that the medical use of marijuana would likely outweigh the potential health risks for the patient.
- "Marijuana" to have the meaning given to cannabis in section 893.02(3), F.S. (2014), and, in addition, "low-THC cannabis" as defined in section 381.986(1)(b), F.S. (2014), shall also be included in the meaning of the term "marijuana."
- "Medical Marijuana Treatment Center" or "MMTC" to mean an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the DOH.
- "Medical use" to mean the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with DOH rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver's designated qualifying patient for the treatment of a debilitating medical condition.
- "Physician Certification" to mean a written document signed by a person who is "licensed to practice medicine" in Florida stating:
  - The physician has conducted a medical examination of the patient and a full assessment of the patient's medical history;
  - That, in the physician's professional opinion, the patient has a debilitating medical condition;
  - That, in the physician's professional opinion, the medical use of marijuana will outweigh the health risks for the patient; and
  - For how long the physician recommends the medical use of marijuana for the patient.

Once certified, a patient may designate one or more caregivers to assist him or her with the medical use of marijuana. The amendment defines a "caregiver" as a person who is at least 21 years of age who has agreed to assist with a qualifying patient's medical use of marijuana and has qualified for and obtained a caregiver identification card issued by the DOH. Caregivers:

[44] This provision is included in the definition of "physician certification."

- Are prohibited from consuming medical marijuana;
- Must obtain an ID card from the DOH;
- Are subject to standards and qualifications established by the DOH including:
  - Background checks;
  - Procedures for issuing ID cards; and
  - Limitations on the number of caregivers per patient and the number of patients per caregiver.

The DOH is required to register MMTCs that will be authorized to acquire, cultivate, possess, process, transfer, transport, sell, distribute, dispense, or administer medical marijuana, related supplies, or educational materials to patients and caregivers. The DOH is required to adopt rules regarding MMTCs including:

- Procedures to register as an MMTC;
- Procedures for the issuance, renewal, suspension, and revocation of MMTC registrations; and
- Standards to ensure proper security, record keeping, testing, labeling, inspection, and safety.

The amendment requires the DOH to adopt rules no later than July 3, 2017, six months after its effective date. The stated purpose of the rules is to ensure the availability and safe use of medical marijuana by qualifying patients. Currently, the DOH has begun the rulemaking process to implement Article X, section 29 of the State Constitution and has held several workshops around Florida.[45] The DOH is required to adopt rules for:

- Issuing patient and caregiver ID cards;[46]
- Procedures for establishing caregiver qualifications;
- Procedures for registering MMTCs; and
- A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply, based on the best available medical evidence. This presumption can be overcome on an individual patient basis.

If the DOH does not adopt rules by the deadline, the amendment creates a cause of action for any Florida citizen to seek judicial relief to compel the DOH's compliance.

Additionally, the DOH is required to begin registering MMTCs and issuing patient and caregiver ID cards by October 3, 2017, nine months after the amendment's effective date. If the DOH does not comply with this requirement, the amendment states that a physician certification is sufficient for a person to become a qualifying patient without being issued an ID card from the DOH.

The amendment also creates a number of specific restrictions on its exemption from liability, and its grants of authority, including specifically:

- Not repealing or allowing violations of other laws related to the non-medical use of marijuana;

[45] Rule 64-4.012, F.A.C., rule notice published on Jan. 17, 2017, *available at* https://www.flrules.org/gateway/ruleNo.asp?id=64-4.012, (last visited on Mar. 20, 2017).

[46] On Feb. 18, 2017, the DOH adopted Rule 64-4.011, F.A.C., addressing the issuance of Compassionate Use Registry Identification Cards. This rule may bring the DOH into compliance with the requirement to adopt rules for issuing ID cards by July 3, 2017; however, the rule may need requiring amending to comply with constitutional terms and to comply with changes to s. 381.986, F.S., provided in this bill.

- Not permitting the operation of any vehicle under the influence of marijuana;
- Not requiring the accommodation of the use of marijuana in specific areas or in any public place;
- Not requiring any health insurance provider to cover the medical use of marijuana; and
- Not affecting laws related to negligence or malpractice on the part of any patient, caregiver, physician, or MMTC agent or employee.

The State Constitution authorizes the Legislature to enact laws consistent with the constitution's language, and provides for severability so that if any clause, sentence, paragraph or section of the amendment, or an application thereof, is found to be invalid by a court of competent jurisdiction, other provisions shall continue to be in effect to the fullest extent possible.

The Revenue Estimating Conference has estimated that under Amendment 2 and the proposed DOH rules, sales tax revenue from medical marijuana sales will be $2.6 million in Fiscal Year 2017-2018 and will increase to $24.3 million in Fiscal Year 2021-2022.

Medical Marijuana in Florida: The Necessity Defense

Despite the fact that the use, possession, and sale of marijuana are prohibited by state law, Florida courts have found that circumstances can necessitate medical use of marijuana and circumvent the application of criminal penalties. The necessity defense was successfully applied in a marijuana possession case in *Jenks v. State* where the First District Court of Appeal found that s. 893.03, F.S., does not preclude the defense of medical necessity for the use of marijuana if the defendant:

- Did not intentionally bring about the circumstance which precipitated the unlawful act;
- Could not accomplish the same objective using a less offensive alternative available; and
- The evil sought to be avoided was more heinous than the unlawful act.[47]

In the cited case, the defendants, a married couple, were suffering from uncontrollable nausea due to AIDS treatment and had testimony from their physician that he could find no effective alternative treatment. Under these facts, the court found that the defendants met the criteria to qualify for the necessity defense and ordered an acquittal of the charges of cultivating cannabis and possession of drug paraphernalia.

Medical Marijuana Laws in Other States

Currently, 28 states, the District of Columbia, and Guam have some form of law that permits the use of marijuana for medicinal purposes.[48] These laws vary widely in detail but most share

[47] *Jenks v. State*, 582 So.2d 676, 679 (Fla. 1st DCA 1991), *review denied*, 589 So.2d 292 (Fla. 1991).

[48] These states include: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. California was the first to establish a medical marijuana program in 1996 and New York was the most recent state to pass medical marijuana legislation in June 2014. Seventeen states allow limited access to marijuana products (low-THC and/or high CBD-cannabidiol). Alabama, Florida, Georgia, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming. National Conference of State Legislatures, *State Medical Marijuana Laws*, (Mar. 16, 2017), *available at* http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx (last visited Mar. 20, 2017).

certain features. For example, most state laws require an identification card and registry for patients and caregivers to use medical marijuana; require the patient to receive certification from up to two physicians that the patient has a qualifying condition before the patient may use medical marijuana; allow a patient to designate a caregiver who can possess the medical marijuana and assist the patient in using the medical marijuana; and provide general restrictions on how medical marijuana can be obtained (self-cultivated or from a dispensary) and where it can be used.[49]

Of the 17 states with low-THC cannabis laws similar to s. 381.986, F.S., most specify that the use of such low-THC cannabis is reserved for patients with epileptic or seizure disorders. Florida allows the treatment of cancer and Georgia allows the treatment of end stage cancer and other specified conditions. Additionally, the definition of low-THC cannabis differs from state to state. The THC level allowed ranges from a high of below five percent to less than 0.3 percent; most states restrict the level of THC to below one percent. CBD levels are generally required to be high, with most states requiring at least 10 percent.[50]

Interaction with the Federal Government

The federal Controlled Substances Act lists marijuana as a Schedule 1 drug and provides no exceptions for medical uses.[51] Possession, manufacture, and distribution of marijuana is a crime under federal law.[52] Although a state's medical marijuana laws protect patients from prosecution for the legitimate use of marijuana under state law, state medical marijuana laws, or Constitutional provisions, do not protect individuals from prosecution under federal law.

In 2013, the U.S. Department of Justice (USDOJ) issued statements indicating that the federal government would not pursue cases for low-level drug crimes, leaving such prosecutions largely up to state authorities. The U.S. Attorney General issued a statement that the USDOJ was changing policy such that individuals "who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels, will no longer be charged with offenses that impose draconian mandatory minimum sentences… [and] would instead receive sentences better suited to their individual conduct…"[53] Further, the USDOJ issued a memorandum clarifying that the department considers small-scale marijuana use to be a state matter which states may choose to punish, and certain operations adhering to state laws legalizing marijuana in conjunction with robust state regulatory systems would be far less likely to come under federal scrutiny.[54] In addition, a rider in recent appropriations acts and continuing resolutions has prohibited the USDOJ from using appropriated funds to prevent specified states

[49] Analysis by Senate Health Policy committee staff of s*upra* note 49.
[50] *Supra* note 49.
[51] 21 U.S.C. s. 812. Note: On August 11, 2016, the Federal Drug Enforcement Administration refused two petitions to reschedule marijuana under the Controlled Substances Act, see https://www.dea.gov/divisions/hq/2016/hq081116.shtml, (last visited on Mar. 20, 2017).
[52] The punishments vary depending on the amount of marijuana and the intent with which the marijuana is possessed. *See* 21 U.S.C ss. 841-865.
[53] USDOJ, *Smart on Crime: Reforming the Criminal Justice System for the 21st Century*, (Aug. 2013), p. 3, *available at* http://www.justice.gov/ag/smart-on-crime.pdf (last visited on Mar. 20, 2017).
[54] USDOJ Memorandum for all U.S. Attorneys from James M. Cole, Deputy Attorney General, *Guidance Regarding Marijuana Enforcement* (August 29, 2013), *available at* http://www.justice.gov/iso/opa/resources/305201382913275685746 7.pdf (last visited Mar. 20, 2017).

(including Florida) from implementing the states' own medical marijuana laws.[55] It is worth noting that, with the election of President Trump and changes to the leadership of the USDOJ, the guidance issued by the USDOJ may be amended in the future; however, it would require an act of Congress to amend the rider preventing the USDOJ from using funds to prevent specified states from implementing medical marijuana laws.

III. Effect of Proposed Changes:

In addition to technical and conforming changes made by the bill to ss. 381.986, 381.987, 385.211, 499.0295, and 1004.441, the bill substantially amends s. 381.986, F.S.

Legislative Intent

The bill adds the legislative intent:

- To implement Art. X, s. 29 of the State Constitution by creating a unified regulatory structure for the acquisition, cultivation, possession, processing, transfer, transportation, sale, distribution, and dispensing of marijuana, marijuana products, related supplies, and educational materials;
- That all rules adopted by the DOH to implement the section be adopted pursuant to ch. 120, F.S., and that the DOH may use emergency rulemaking procedures to adopt rules if necessary to meet any rulemaking deadlines established in Art. X, s. 29 of the State Constitution; and
- That all registrations for MMTC activities be issued solely in accordance with the requirements of this section and rules adopted under the section.

Definitions

The bill:

- Conforms the definitions for "caregiver," "debilitating medical condition," "marijuana," "medical marijuana treatment center" or "MMTC," to the definitions in Article X section 29 of the State Constitution.
- Uses the constitutional definition for "medical use" but amends the definition to restrict:
  - Smoking;
  - The possession, use, or administration of marijuana not purchased from an MMTC;
  - The transfer of marijuana to anyone other than a qualifying patient or his or her caregiver;
  - The use or administration of any type or amount of marijuana not specified on a qualifying patient's physician certification; and
  - The use or administration of marijuana:
    - On any form of public transportation;
    - In any public place;

[55] *See* Pub. Law No. 114-113, s. 542 (Consolidated Appropriations Act, 2016). A recent court order by the U.S. District Court for the Northern District of California recently held that a similar provision in the previous appropriations act (s. 538, Pub. L. No. 113-235) does not prohibit the USDOJ from enforcing violations of *federal* marijuana laws by individuals or businesses who are complying with state medical marijuana laws. U.S. v. Marin Alliance for Medical Marijuana and Shaw, Order re: Motion to Dissolve Permanent Injunction, No. C 98-00086 CB, (Oct. 19, 2015), available at http://www.scribd.com/doc/286089509/US-vs-Marin-Alliance-for-Medical-Marijuana#scribd (last visited Mar. 20, 2017).

  - In a qualifying patient's place of employment if restricted by his or her employer;
  - In a state correctional institution;
  - On the grounds of a preschool, primary school, or secondary school; or
  - On a school bus or in a vehicle, aircraft, or motorboat.
- Uses the constitutional definition for "qualifying patient," but also includes "eligible patients" as defined in the Right to Try Act, patients suffering from a physical medical condition that produces symptoms of seizures or severe and persistent muscle spasms, and patients suffering from chronic nonmalignant pain.
- Adds definitions for:
  - "Chronic nonmalignant pain" to mean pain that is caused by a debilitating medical condition or that originates from a debilitating medical condition and persists beyond the usual course of that debilitating medical condition; and
  - "Close relative" to mean a spouse, parent, sibling, grandparent, child, or grandchild, whether related by whole or half-blood, by marriage, or by adoption.

Physician Certifications

The bill allows physicians to issue physician certifications to:
- A patient suffering from a debilitating medical condition;
- A patient suffering from a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms;[56]
- A patient suffering from chronic nonmalignant pain, if the physician has diagnosed an underlying debilitating medical condition as the cause of the pain, which allows the patient to receive marijuana for the patient's medical use to alleviate the patient's pain;
- An eligible patient as defined in the Right to Try Act; or
- A patient who is not a Florida resident and who qualifies under one of the above listed conditions and who can lawfully receive marijuana in the state in which he or she resides.

Before certifying a patient the physician must:
- Be licensed under ch. 458 or 459, F.S.;
- Have successfully completed the required 4-hour course and exam administered by the Florida Medical Association or the Florida Osteopathic Medical Association each time the physician renews his or her license;[57]
- Have conducted a full assessment of the patient's medical history;
- Have determined that, in the physician's professional opinion, the patient meets one of the criteria specified above;
- Have determined that the medical use of marijuana would likely outweigh the potential health risks to the patient; and
- Have obtained the voluntary written informed consent of the patient or, if the patient is a minor, the patient's parent or legal guardian, after having sufficiently explained the current state of knowledge in the medical community of the effectiveness of treatment of the patient's condition with marijuana and the potential risks and side effects.[58]

[56] Such patient may receive only low-THC cannabis if the patient does not meet any of the other qualifications.
[57] Section 381.986(4)(a), F.S., requires an 8-hour course and exam which must be retaken biannually.
[58] If the patient is an eligible patient, the physician must obtain written informed consent pursuant to s. 499.0295, F.S.

For patients under the age of 18, a second physician must concur with the treating physician's determination that the medical use of marijuana would likely outweigh the health risks for the patient. Additionally, patients under the age of 18 are restricted from purchasing marijuana and are required to have a parent, legal guardian, caregiver, or health care provider assist them in purchasing and administering marijuana.

The physician must also register as the treating physician with the compassionate use registry and maintain a patient treatment plan that must be submitted to the University of Florida College of Pharmacy on a quarterly basis. The bill increases the amount of marijuana a physician may certify a patient to receive from a 45-day supply to a 90-day supply and allows a physician to certify a patient for longer than the 90-day period if the physician believes that the patient will use the additional marijuana in a medically appropriate way. Patients must be recertified at least annually. A physician may not issue physician certifications if he or she is a medical director employed by an MMTC.

The bill also grandfathers in all orders for low-THC cannabis issued prior to the effective date of the act as physician certifications, and requires the DOH to consider patients with such orders as qualifying patients until the DOH begins issuing compassionate use registry identification cards.

Prohibited Acts

The bill:

- Conforms existing penalties to the changes made by the bill;
- Creates two new misdemeanors for a qualifying patient or caregiver who cultivates marijuana or who purchases or acquires marijuana from any person or entity other than an MMTC[59] and a caregiver who violates any of the applicable provisions of this section or applicable department rules;[60]
- Specifies that an MMTC may not advertise services that it is not registered to provide; and
- Prohibits any person or entity from offering or advertising services as an MMTC without being registered as an MMTC. The bill establishes penalties for unlicensed activity including fines of up to $10,000 per day, and that the DOH or any state attorney may bring action for an injunction of the activity until compliance has been established to the satisfaction of the DOH. The bill also allows the DOH to assess reasonable investigative and legal costs for a successful prosecution.

Caregivers

The bill allows a qualifying patient to designate a caregiver to assist him or her with the medical use of marijuana. The bill requires the DOH to register a caregiver and issue him or her a compassionate use registry identification card if designated by a qualifying patient, and the caregiver:

- Is 21 years of age or older, unless the patient is a close relative of the caregiver;
- Agrees in writing to be the qualifying patient's caregiver;

[59] A first degree misdemeanor.
[60] A second degree misdemeanor on the first offense and a first degree misdemeanor on subsequent offenses.

- Does not receive compensation, other than actual expenses incurred, for assisting the qualifying patient with the medical use of marijuana unless the caregiver is acting pursuant to employment in a licensed facility in accordance with subparagraph (c)2.; and
- Passes a Level 2 background screening pursuant to ch. 435, F.S., unless the patient is a close relative of the caregiver.

A qualifying patient may have only one designated caregiver at a time unless all of the patient's caregivers are his or her close relatives or legal representatives. A caregiver may assist only one patient at a time unless:

- All qualifying patients the caregiver is assisting are close relatives of each other and the caregiver is the legal representative of at least one of the patients; or
- All qualifying patients the caregiver is assisting are receiving hospice services, or are residents, in the same assisted living facility, nursing home, or other licensed facility and have requested the assistance of that caregiver with the medical use of marijuana; the caregiver is an employee of the hospice or licensed facility; and the caregiver provides personal care or services directly to clients of the hospice or licensed facility as a part of his or her employment duties at the hospice or licensed facility.
- A nursing home or assisted living facility may not prevent a qualifying patient residing in the nursing home or assisted living facility from hiring a caregiver, but a nursing home or assisted living facility may prohibit its employees from acting as caregivers to residents of the nursing home or assisted living facility. A nursing home or assisted living facility is not required to provide a caregiver to a resident who is a qualifying patient.

Duties of the DOH

Compassionate Use Registry

The bill requires the DOH to expand access to the compassionate use registry to:

- Practitioners licensed under ch. 458 or 459, F.S., to ensure proper care for patients requesting physician certifications; and
- Practitioners licensed to prescribe prescription drugs, to ensure proper care for patients before prescribing medications that may interact with the medical use of marijuana;

The bill specifies that law enforcement agencies may check the registry to verify the authorization of a qualifying patient or a patient's caregiver to possess marijuana or a cannabis delivery device.

Compassionate Use Registry Identification Cards

By July 3, 2017, the bill requires the DOH to adopt rules establishing procedures for the issuance, annual renewal, suspension, and revocation of compassionate use registry identification cards for patients and caregivers who are residents of this state. The bill allows the DOH to charge a reasonable fee for issuing and renewal of identification cards. The bill requires that the DOH begin issuing identification cards to patients and caregivers by October 3, 2017. Minor patients must provide the DOH with written consent from a parent or a legal guardian before being issued an identification card. Identification cards may be issued to out-of-state patients after the DOH confirms they are able to receive marijuana legally in their state of residency through a medical marijuana program.

The bill specifies that the identification cards must be resistant to counterfeiting and tampering and at a minimum contain:

- The name, address, and date of birth of the patient or caregiver, as appropriate;
- A full-face, passport-type, color photograph of the patient or caregiver, as appropriate, taken within the 90 days immediately preceding registration;
- Designation of the cardholder as a patient or caregiver;
- A unique numeric identifier for the patient or caregiver which is matched to the identifier used for such person in the department's compassionate use registry. A caregiver's identification number and file in the compassionate use registry must be linked to the file of the patient or patients the caregiver is assisting so that the caregiver's status may be verified for each patient individually;
- The expiration date, which shall be one year after issuance or the date treatment ends as provided in the patient's physician certification, whichever occurs first; and
- For caregivers who are assisting three or fewer qualifying patients, the names and unique numeric identifiers of the qualifying patient or patients that the caregiver is assisting.

Dispensing Organization Grandfathering

The bill requires the DOH to grandfather in all existing DOs as MMTCs as soon as practicable.[61] The DOH may not charge the DOs a registration fee and the bill states that, for the purposes of the act, all DOs are deemed to be MMTCs on the effective date of the act. The bill requires that the DOs continue to comply with all representations made in their applications to be dispensing organizations after being registered as MMTCs and allows the DOH to grant variances to those representations.

Additional MMTCs

The bill requires that, by October 3, 2017, the DOH register five additional MMTCs with at least one applicant that is a recognized class member of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) or In re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011) and a member of the Black Farmers and Agriculturalists Association. Additionally, within six months of each instance of the registration of 75,000 patients in the compassionate use registry, the DOH must register four additional MMTCs. The bill retains the requirement that MMTCs be vertically integrated, but eliminates the requirements that MMTCs possess a valid certificate of registration issued by the DACS pursuant to s. 581.131, F.S., that is issued for the cultivation of more than 400,000 plants, be operated by a nurseryman as defined in s. 581.011, F.S., and have been operated as a registered nursery in this state for at least 30 continuous years. The bill requires that all applicants must be registered to do business in Florida for at least five continuous years prior to applying. The bill also restricts the DOH from issuing more than one MMTC registration to a person or entity.

Independent Testing Laboratories

The bill authorizes the establishment of independent testing laboratories (ITLs) to collect and accept samples of, possess, store, transport, and test marijuana. All MMTCs are required to have

[61] Including DOs that become MMTCs pursuant to the results of litigation (see present situation for details).

their marijuana tested at an ITL to ensure that it meets DOH standards before it is dispensed. All ITLs must be licensed by the DOH except clinical laboratories licensed by the Agency for Health Care Administration (AHCA) which are exempt from this requirement. The DOH is required to adopt rules for ITL licensure requirements and a process for licensing ITLs including an application form, an initial application fee, and a biennial renewal fee.

In addition to licensure, the bill also requires that ITLs be certified by the DOH to perform all required tests. The DOH must issue a certification to an ITL that has been certified by a third-party laboratory certification body approved by the DOH. The DOH must adopt rules for certifying ITLs including rules for personnel qualifications, equipment and methodology, proficiency testing, tracking, sampling, chain of custody, record and sample retention, reporting, audit and inspection, and security.

The bill specifies that an ITL may accept samples only from a sample source approved by the DOH which, at a minimum, must include an MMTC, a researcher affiliated with an accredited university or research hospital, a qualifying patient, or a caregiver.

Quality Control Program

The bill requires the DOH to establish a marijuana quality control program that must require MMTCs to submit samples from each batch or lot of marijuana harvested or manufactured to an ITL to ensure that, at a minimum, labeling of the potency of THC and other marketed cannabinoids or terpenes is accurate and that it is safe for human consumption. The MMTC is required to maintain records of all tests conducted including the results and any other information required by the DOH. The DOH is required to adopt rules to create and oversee the program which must, at a minimum, include:

- Permissible levels of variation in potency labeling and standards requiring THC be consistently distributed throughout edible marijuana products;
- Permissible levels of contaminants and mandatory testing for contaminants including, but not limited to, testing for microbiological impurity, residual solvents, and pesticide residues;
- The destruction of marijuana determined to be inaccurately labeled or unsafe for human consumption after the MMTC has an opportunity to take remedial action;
- The collection, storage, handling, recording, and destruction of samples of marijuana by ITLs; and
- Security, inventory tracking, and record retention.

The bill also requires the DOH to reduce or suspend any testing requirement in its quality control program if the number of licensed and certified ITLs is insufficient to process the tests necessary to meet patient demand.

Seed-to-Sale Tracking System

The bill requires the DOH to establish, maintain, and control a computer software tracking system that traces marijuana from seed to sale. The tracking system must allow real-time, 24-hour access by the DOH to data from all MMTCs and ITLs and must, at a minimum, include notification of when marijuana seeds are planted, when marijuana plants are harvested and destroyed, and when marijuana is transported, sold, stolen, diverted, or lost. Each MMTC must use the seed-to-sale tracking system selected by the DOH.

MMTC Requirements

The requirements for MMTCs are substantially similar to the requirements for DOs in current law. The bill amends requirements for MMTCs so that:

- MMTCs are required to maintain compliance with all the representations made to the DOH in the MMTC's application for registration.
  - Upon request, the DOH may grant an MMTC one or more variances from the representations made in the MMTC's application.
  - Consideration of such a variance shall be based upon the individual facts and circumstances surrounding the request.
  - A variance may not be granted unless the requesting MMTC can demonstrate to the department that it has a proposed alternative to the specific representation made in its application which fulfills the same or a similar purpose as the specific representation in a way that the DOH can reasonably determine will not be a lower standard than the specific representation in the application.
- MMTCs are required to label all marijuana with the concentration of THC and CBD in the product and with the recommended dose for the qualifying patient receiving it.
- MMTCs are allowed to produce edible products, but may not produce such items that are designed to be attractive to children. Additionally, MMTCs must meet all food safety standards established in state and federal law, including, but not limited to, the identification of the serving size and the amount of THC in each serving.
- MMTCs may not dispense marijuana from more than three dispensing facilities. This limitation does not apply to retail facilities that dispense only low-THC cannabis and sell marijuana delivery devices to qualified patients.
- When transporting marijuana, a copy of the transportation manifest must be in the vehicle at all times.

The bill also requires the DOH to adopt by rule a process for approving MMTC changes in ownership and changes in an MMTC owner's investment interest.

Rulemaking

The bill requires the DOH to adopt emergency rules pursuant to s. 120.54(4), F.S., as necessary to implement the section. The bill states that if an emergency rule adopted under this section is voided due to being held unconstitutional or an invalid exercise of delegated legislative authority, the DOH and any applicable boards may adopt an emergency rule to replace the voided rule. However, if the second emergency rule is voided, the DOH and the applicable boards must adopt rules based on standard procedures.

The bill exempts emergency rules from the requirement to make findings pursuant to s. 120.54(4)(a), F.S.;[62] from ss. 120.54(3)(b),[63] 120.541,[64] and 120.54(4)(c), F.S.[65] The DOH and applicable boards must meet the procedural requirements in s. 120.54(2)(a), F.S.,[66] if the DOH or the applicable boards have, before the effective date of the act, held any public workshops or hearings on the subject matter of the emergency rules. Additionally, challenges to emergency rules adopted under this section are subject to the time schedules provided in s. 120.56(5), F.S.[67] Emergency rules adopted under this section remain in effect until they are replaced by rules adopted through normal procedures. The DOH must begin nonemergency rulemaking by January 1, 2018, and may not use emergency rulemaking procedures after that date, unless replacing emergency rules deemed invalid.

Miscellaneous Provisions

The bill:

- Specifies that nothing in the act limits the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy and that an employer is not required to accommodate the use of marijuana in the workplace or any employee working while under the influence of the marijuana.
- Specifies that nothing in the section creates a cause of action against an employer for wrongful discharge or discrimination.
- Creates an additional exemption from criminal penalties related to marijuana for research institutions established by a public postsecondary educational institution, such as the H. Lee Moffitt Cancer Center and Research Institute, and for state universities that have achieved preeminent state research university designation.[68]

The Medical Marijuana Research and Education Act

The bill creates s. 1004.4351, F.S., to create the Medical Marijuana Research and Education Act. The act:

- Establishes the Coalition for Medicinal Cannabis Research and Education (Coalition) within the H. Lee Moffitt Cancer Center and Research Institute, Inc. (MCCRI) and provides that the Coalition's purpose is to conduct rigorous scientific research, provide education, disseminate research, and to guide policy development for the adoption of a statewide policy on ordering and dosing practices for the medicinal use of cannabis.
- Creates the Medicinal Cannabis Research and Education Board (Board) to direct the Coalition's operations. Additionally, the bill specifies Board membership requirements and requires the Board to:

[62] Section 120.54(a)3., F.S., requires the agency publishing emergency rules to also publish in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances.
[63] The requirement to prepare a statement of estimated regulatory cost (SERC) and to consider the impact of rules on small business, small counties, and small cities.
[64] Detailing the requirements of a SERC.
[65] Restricting an emergency rule from being effective for more than 90 days with some exceptions.
[66] Requiring notice of rule development be published prior to filing for rule adoption.
[67] The DOAH has seven days to assign an administrative law judge who must conduct the hearing within 14 total days (including the days used in assigning the judge). The judge then has 14 days after the hearing to render a decision.
[68] Pursuant to s. 1001.7065, F.S.

  - Advise the Board of Governors, the State Surgeon General, the Governor, and the Legislature with respect to medicinal cannabis research and education in Florida.
  - Explore methods of implementing and enforcing medicinal cannabis laws in relation to cancer control, research, treatment, and education.
  - Annually adopt a plan for medicinal cannabis research, known as the Medicinal Cannabis Research and Education Plan (Plan) in accordance with state law, and must include recommendations for the coordination and integration of medical, nursing, paramedical, community, and other resources connected with the treatment of debilitating medical conditions, research related to the treatment of such conditions, and education.
  - Issue an annual report, by February 15, to the Governor, the President of the Senate, and the Speaker of the House Representatives on research projects, community outreach initiatives, and future plans for the Coalition.
- Provides that the Coalition must be administered by a director who, subject to Board approval, must:
  - Propose a budget.
  - Foster the collaboration of scientists, researchers, and other appropriate personnel.
  - Identify and prioritize the Coalition's research.
  - Prepare the Plan for submission to the Board.
  - Apply for grants to obtain funding for the Coalition's research.
  - Perform other Board specified duties.
- Requires the MCCRI to allocate staff, information, and assistance to assist the Board.

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article X, section 29 of the State Constitution is a unique provision in that it directs a state agency, the DOH, to implement its provisions without requiring implementing legislation. However, Article X, section 29(4)(e) of the State Constitution, does provide that nothing in that section shall limit the Legislature from enacting laws consistent with the section. Given the novelty of the constitutional provision, it is unclear how the courts will interpret its provisions as well as the interaction between its provisions and implementing legislation and rules.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates that the bill has a positive but indeterminate fiscal impact on state revenues.

B. Private Sector Impact:

The bill will create opportunities for new MMTCs that are called for under its provisions, and for independent testing laboratories. Existing DOs may face a more competitive marketplace due to the increase in the number of allowed suppliers of marijuana, but the number of patients using their services is also expected to grow.

Patients and caregivers will be required to pay for identification cards, and caregivers and employees of MMTCs must pay for background screening.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact on the DOH due to the cost of increased regulatory activity required by the bill, which should be offset by fees and fines the DOH is allowed to assess. The DOH estimates that fees and fines may generate between $6.1 million and $8.6 million while total expenditures may be between $6 million and $8.9 million.[69]

The FDLE estimates that revenues derived from the bill for the FDLE may range from $9 million to $18 million generated by fees for criminal history records checks.[70] The FDLE analysis indicates that implementation of the bill will require 16 FTEs to perform criminal history background checks, two additional toxicology analysts, and two additional fingerprint analysts. Cost estimates provided by the FDLE for the additional staff are $1,278,157 in Fiscal Year 2017-2018, and $1,197,237 on a recurring basis; however, fees for criminal history records checks should offset these costs.[71]

The bill may have an indeterminate fiscal impact on local governments. Local governments may see a positive fiscal impact from fees associated with licensing and inspecting additional MMTC facilities as permitted by current law and may derive additional tax revenue from the sale of marijuana. Local governments may see a negative fiscal impact due to the expenses associated with implementing ordinances and undertaking regulatory activities required by such ordinances.

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[69] The DOH states that expenditures are highly dependent on the number of qualifying patients. See DOH, *Senate Bill 406 Analysis* (Feb. 14, 2017) (on file with the Senate Committee on Health Policy).
[70] The fee depends on whether or not caregivers are intended to be entered into the clearinghouse. See FDLE, *Senate Bill 406 Analysis* (Feb. 15, 2017) (on file with the Senate Committee on Health Policy).
[71] FDLE, *Senate Bill 406 Analysis* (Feb 15, 2017) (on file with the Senate Appropriations Subcommittee on Finance and Tax).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the bill allows MMTCs to use contractors in general, it is unclear from the text of the bill what limits are placed on how an MMTC may use a contractor. The bill should be clarified to specify the duties a contractor may perform for an MMTC.

The FDLE notes that entering results obtained from a state or criminal history record check into a registry, as the bill appears to require DOH to do with information it receives from physicians, patients and caregivers, is prohibited by Public Law 92-544. Similarly, the provision in the bill that the application form for registration as an MMTC must demonstrate that all owners and managers have been fingerprinted and have successfully passed a level 2 background screening is also prohibited by Public Law 92-544.[72]

The bill provides circumstances under which a physician may lawfully issue a physician certification to a patient who is not a resident of this state or under which DOH may issue a compassionate use registry identification card to a patient who is not a resident of this state, but never explicitly states that a patient must otherwise be a resident of this state.[73]

The bill allows a physician to certify an amount greater than a 90-day supply of marijuana if he or she has reasonable belief that the patient will use the additional marijuana in a medically appropriate way; however, the bill does not apply the exception to the 90-day supply limit of marijuana to the exemptions from criminal penalties contained in chapter 893, F.S. The bill should be clarified to apply the exception to the 90-day supply limit of marijuana consistently throughout the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.986, 381.987, 385.211, 499.0295, and 1004.441.

The bill creates section 1004.4351 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 Health and Human Services on April 18, 2017:
The committee substitute:

[72] FDLE, *Senate Bill 406 Analysis* (Feb 15, 2017) (on file with the Senate Appropriations Subcommittee on Finance and Tax).
[73] Amendment 2 provides that a "qualifying patient" means a person (not a Florida resident) who meets certain criteria.

- Requires a physician who issues a physician certification for marijuana to successfully complete the 4-hour course each time he or she renews his or her license.
- Provides that a nursing home or assisted living facility may not prevent a qualifying patient residing in the nursing home or assisted living facility from hiring a caregiver, but a nursing home or assisted living facility may prohibit its employees from acting as caregivers to residents of the nursing home or assisted living facility, and a nursing home or assisted living facility is not required to provide a caregiver to a resident who is a qualifying patient.
- Limits MMTCs to three dispensing facilities. This limitation does not apply to facilities that only dispense low-THC cannabis and sell marijuana delivery devices to qualified patients.

CS by Health Policy on April 3, 2017:
The CS amends SB 406 to:

- Add legislative intent.
- Reinstate the requirement that a second physician confirm a diagnosis when certifying a person under the age of 18 and require a parent, legal guardian, caregiver, or health care provider to purchase marijuana for qualifying patients under the age of 18.
- Allow a physician to certify out of state patients that meet Florida requirements for treatment with marijuana.
- Allow a physician to certify a patient for greater than a 90-day supply if the physician believes the patient will use the marijuana appropriately.
- Specify that MMTCs may not advertise services that they are not registered to provide.
- Prohibit any person or entity from offering or advertising services as an MMTC without being registered as an MMTC and provide penalties for unlicensed activity.
- Require the DOH to register five additional MMTCs by October 3, 2017, including one that is a member of the Black Farmers and Agriculturalists Association.
- Require the Department of Health to add four new MMTCs within six months after the registration of each instance of 75,000 patients in the Compassionate Use Registry.
- Require that all MMTC applicants be registered to do business in Florida for at least five consecutive years prior to submitting their application.
- Prohibit any person or entity from being issued more than one MMTC registration.
- Require the DOH to license ITLs (clinical laboratories licensed by the AHCA are exempt from this requirement). ITLs must also be certified by the DOH to perform all required tests. The DOH must certify an ITL that has third-party accreditation from an accrediting body approved by the DOH. The DOH must adopt rules for licensure and certification of ITLs.
- Require the DOH to establish a quality control program for the testing of marijuana. The program must require MMTCs to submit samples of marijuana to an ITL to ensure minimum standards are met. The DOH must adopt rules to create and oversee the program.
- Require the DOH to establish, maintain, and control a seed-to-sale tracking system.

- Authorize an employer to deny accommodation for the ingestion of marijuana in the workplace or for any employee working while under the influence of marijuana.
- Specify that the section does not create a cause of action for wrongful discharge or discrimination.
- Incorporate an exemption from criminal laws for research institutions performing research on marijuana.
- Require the DOH to abide by the provisions of ch. 120, F.S., when adopting rules to implement this section and allows the department to use emergency rulemaking procedures.
- Establish the "Medical Marijuana Research and Education Act" to:
  - Create the Coalition for Medical Marijuana Research and Education within the H. Lee Moffitt Cancer Center and Research Institute, Inc.;
  - Task the coalition with conducting rigorous scientific research, providing education, disseminating research, and guiding policy for the adoption of a statewide policy on ordering and dosing practices for medical marijuana;
  - Specify the make-up of the coalition including the duties of the director of the coalition;
  - Require the coalition to annually adopt a research plan; and
  - Require the coalition to annually report to the Governor and the Legislature on research projects, community outreach, and future plans.

B. Amendments:

None.

225574

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/27/2017	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 311 and 312
insert:
6. Has reviewed the compassionate use registry and confirmed that the patient does not have an active physician certification issued by another physician;

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

Between lines 10 and 11

insert:

requiring a physician to conduct a physical examination and make a full assessment of the medical history of a patient and make certain determinations before the physician may certify a patient and specify a delivery device; requiring a physician to review the compassionate use registry and confirm that a patient does not have an active physician certification issued by another physician before the physician may certify a patient and specify a delivery device;

427570

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/27/2017	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 330 - 339

and insert:

~~treatment is discontinued~~; and

~~(f) Maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the low-THC cannabis or medical cannabis;~~

~~(g) Submits the patient treatment plan quarterly to the~~

427570

~~University of Florida College of Pharmacy for research on the safety and efficacy of low-THC cannabis and medical cannabis on patients;~~

7.~~(h)~~ Obtains the voluntary written informed consent of the

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

And the title is amended as follows:

Delete line 17

and insert:

supply; eliminating the requirement that physicians maintain patient treatment plans and submit the treatment plans to the University of Florida College of Pharmacy; requiring written consent of a parent or legal

974884

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/27/2017	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 585 - 610
and insert:
1. Before issuing an identification card to a patient, the department must determine that:
a. The patient is a permanent resident of the state or, for a patient under the age of 18, the patient's parent or legal guardian is a permanent resident of the state. The patient, or the parent or legal guardian of the patient, must prove

974884

permanent residency by providing the department with a copy of a valid Florida driver license or Florida identification card, a copy of a utility bill in his or her name issued within the prior 90 days which shows an address in this state, or a copy of his or her Florida voter information card.

b. If the patient is not a permanent resident of the state:

(I) He or she is eligible to receive marijuana in his or her state of permanent residence; and

(II) He or she will be remaining in this state for at least 3 consecutive months.

(A) An adult patient may provide the department with documentation that may include, but is not limited to, a rental agreement for a property in this state for period of at least 3 months, an employment contract based in this state which indicates the employment is for a period of at least 3 months, or a receipt for paid tuition at a school in this state for a period of at least 3 months.

(B) A parent or legal guardian of a patient who is under the age of 18 must provide documentation as described in sub-sub-sub-subparagraph (A) or in department rule and provide additional documentation that the patient is his or her child or ward.

The department shall adopt in rule a list of documents that a patient may provide to qualify for an identification card under this subparagraph.

2. Patient and caregiver identification cards must be resistant to counterfeiting and tampering and must include at least the following:

974884

a. The name, address, and date of birth of the patient or caregiver, as appropriate;

b. A full-face, passport-type, color photograph of the patient or caregiver, as appropriate, taken within the 90 days immediately preceding registration;

c. Designation of the cardholder as a patient or caregiver;

d. A unique identification number for the patient or caregiver which is matched to the identification number used for such person in the department's compassionate use registry. A caregiver's identification number and file in the compassionate use registry must be linked to the file of the patient or patients the caregiver is assisting so that the caregiver's status may be verified for each patient individually;

e. The expiration date, which shall be 1 year after the date of issuance of the identification card or the date treatment ends, as provided in the patient's physician certification, whichever occurs first; and

f. For caregivers who are assisting three or fewer

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

And the title is amended as follows:

Delete line 53

and insert:

registrants by a specific date; requiring the department to make certain determinations before issuing an identification card to a patient; providing that a patient or the parent or legal guardian of a patient must provide the department with certain documentation to qualify for an identification card;

974884

requiring the department to adopt a rule listing documents that a patient may provide to qualify for an identification card; providing requirements

338004

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/26/2017	.	
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The Committee on Appropriations (Bracy) recommended the following:

Senate Amendment

Delete line 653
and insert:
Agriculturalists Association - Florida Chapter.

368518

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/27/2017	.	
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The Committee on Appropriations (Braynon) recommended the following:

Senate Amendment

Delete lines 661 - 714
and insert:
(g) Identify applicants with strong diversity plans reflecting this state's commitment to diversity.
(h) Implement training programs and other educational programs to enable minority persons and minority business enterprises, as defined in s. 288.703, and veteran business enterprises, as defined in s. 295.187, to compete for MMTC

registration and contracts.

(i) ~~The department shall~~ Develop an application form for registration as an MMTC and impose an initial application and biennial renewal fee that is sufficient to cover the costs of administering this section. To be registered as an MMTC, the ~~an~~ applicant ~~for approval as a dispensing organization~~ must be able to demonstrate:

1. That, for the 5 consecutive years before submitting the application, the applicant has been registered to do business in this state.

2.~~1.~~ The technical and technological ability to cultivate and produce low-THC cannabis and marijuana. ~~The applicant must possess a valid certificate of registration issued by the Department of Agriculture and Consumer Services pursuant to s. 581.131 that is issued for the cultivation of more than 400,000 plants, be operated by a nurseryman as defined in s. 581.011, and have been operated as a registered nursery in this state for at least 30 continuous years.~~

3.~~2.~~ The ability to secure the premises, resources, and personnel necessary to operate as an MMTC ~~a dispensing organization~~.

4.~~3.~~ The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances.

5.~~4.~~ An infrastructure reasonably located to dispense low-THC cannabis and marijuana to registered qualifying patients statewide ~~or regionally as determined by the department~~.

6.~~5.~~ The financial ability to maintain operations for the

duration of the 2-year approval cycle, including the provision of certified financials to the department. Upon approval, the applicant must post a $5 million performance bond. However, upon an MMTC ~~a dispensing organization's~~ serving at least 1,000 qualifying ~~qualified~~ patients, the MMTC ~~dispensing organization~~ is only required to maintain a $2 million performance bond.

7.~~6.~~ That all owners and managers have been fingerprinted and have successfully passed a level 2 background screening pursuant to s. 435.04.

8. The ability to implement a diversity plan that promotes and ensures the involvement of minority persons and minority business enterprises, as defined in s. 288.703, or veteran business enterprises, as defined in s. 295.187, in ownership, management, employment, and contracting opportunities.

a. A diversity plan must be submitted with an MMTC application.

b. Upon registration renewal the MMTC must show the effectiveness of the diversity plan by including the following:

(I) Representation of minority persons and veterans in the MMTC's workforce;

(II) Efforts to recruit minority persons and veterans for employment; and

(III) A record of contracts for services with minority business enterprises and veteran business enterprises.

9.~~7.~~ The employment of a medical director to supervise the activities of the MMTC ~~dispensing organization~~.

~~(c) Upon the registration of 250,000 active qualified patients in the compassionate use registry, approve three dispensing organizations, including, but not limited to, an~~

~~applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association, which must meet the requirements of subparagraphs (b)2.-7. and demonstrate the technical and technological ability to cultivate and produce low-THC cannabis.~~

(j)~~(d)~~ Allow an MMTC ~~a dispensing organization~~ to make a wholesale purchase of marijuana ~~low-THC cannabis or medical cannabis~~ from, or a distribution of marijuana ~~low-THC cannabis or medical cannabis~~ to, another MMTC ~~dispensing organization~~.

(k)~~(e)~~ Monitor physician registration in the compassionate

427690

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/27/2017	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 928 and 929
insert:
(f) An MMTC may not contract with an entity to provide services authorized for or on behalf of an MMTC unless the entity holds a permit issued by the department. Entities seeking to contract with an MMTC to provide such services must apply for a permit by submitting an application, paying the required fee, and providing any other information requested by the department

427690

before entering into any contract with any MMTC in this state. The department shall develop an application form and impose an initial application and biennial renewal fee in an amount sufficient to cover the costs of administering this paragraph. The department may conduct background screenings of certain contracted employees based on the nature of the contracted services provided.

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

And the title is amended as follows:

Delete line 100

and insert:

samples; prohibiting an MMTC from contracting with an entity to perform certain services unless the entity holds a permit issued by the department; requiring an entity to apply for a permit and pay an application fee before contracting with an MMTC; requiring the department to develop such application; authorizing the department to conduct background screenings of certain employees; requiring the department to adopt rules

900914

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/27/2017	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1029 - 1034

and insert:

(d) The department shall approve an MMTC's request for a change in ownership, equity structure, or transfer of registration to a new entity that meets the requirements in paragraph (7)(g) if individuals seeking a 5 percent or greater direct or indirect equity interest in the MMTC are fingerprinted and have successfully passed a level 2 background screening

900914

pursuant to s. 435.04. Individuals who seek or hold less than a 5 percent direct or indirect equity interest in the MMTC are not required to be fingerprinted or pass the background check. A request for a change in MMTC ownership, equity structure, or transfer of registration is deemed approved if not denied by the department within 15 days after receipt of the request. The department shall adopt by rule a process which includes specific criteria for the approval or denial of such requests.

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

And the title is amended as follows:

Delete lines 100 - 102

and insert:

samples; requiring the department to approve an MMTC's request for a change in ownership, equity structure, or transfer of registration to a new entity if certain criteria are met; providing an exception to a requirement regarding the submission of fingerprints and passing of a background check; providing that a request is deemed approved if not denied by the department within a specified timeframe; requiring the department to adopt rules; requiring the department to

877586

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/27/2017	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 1289 and 1290
insert:

(b) Beginning January 15, 2018, and quarterly thereafter, the Department of Health shall electronically submit to the coalition a data set that includes, for each patient registered with the compassionate use registry, as described in s. 381.986:

1. The debilitating medical condition, as defined in s. 381.986, of the patient;

877586

2. The amount of marijuana certified, and the recommended length of time that the amount of marijuana is certified, for the patient;

3. The route of administration of marijuana to the patient and any delivery device for the administration of marijuana to the patient; and

4. The patient's certifying physician.

The coalition shall review the data submitted by the department. If, after review of the data, the coalition determines that state law and rules should be modified to address abuse or fraud of the system established in s. 29, Art. X of the State Constitution, s. 381.986, and associated rules, the coalition must include recommendations for changes to state law and rules to address such abuse or fraud in the report submitted by the board pursuant to paragraph (g).

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

And the title is amended as follows:

Delete line 116

and insert:

a purpose for the coalition; requiring the department to electronically submit to the coalition a data set that includes certain information for each patient registered with the compassionate use registry; requiring the coalition to review the data submitted by the department and to make certain determinations and to potentially issue recommendations for changes to state law and rules; establishing the Medical


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576-04078-17

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Health and Human Services)

A bill to be entitled

An act relating to compassionate use of low-THC cannabis and marijuana; amending s. 381.986, F.S.; providing legislative intent; defining and redefining terms; authorizing physicians to issue physician certifications to specified patients who meet certain conditions; authorizing physicians to make specific determinations in certifications; requiring physicians to meet certain conditions to be authorized to issue and make determinations in physician certifications; specifying certain persons who may assist a qualifying patient under the age of 18 in the purchasing and administering of marijuana; prohibiting qualifying patients under the age of 18 from purchasing marijuana; providing that a physician may in certain circumstances certify an amount greater than a 90-day supply; requiring written consent of a parent or legal guardian for the treatment of minors; requiring that certain physicians annually reexamine and reassess patients and update patient information in the compassionate use registry; revising criminal penalties; prohibiting a medical marijuana treatment center from advertising services it is not authorized to provide; providing fines; prohibiting a person or entity from advertising or providing medical marijuana treatment center services without being registered with the department as a medical marijuana treatment


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center; providing penalties; authorizing a distance learning format for a specified course and reducing the number of hours required for the course; providing that physicians who meet specified requirements are grandfathered for the purpose of specified education requirements; authorizing qualifying patients to designate caregivers; requiring caregivers to meet specified requirements; prohibiting a qualifying patient from designating more than one caregiver at any given time; providing exceptions; requiring the Department of Health to register caregivers meeting certain requirements on the compassionate use registry; prohibiting a nursing home or assisted living facility from preventing certain residents from hiring a caregiver; authorizing a nursing home or assisted living facility to prohibit its employees from acting as caregivers to residents; providing that a nursing home or assisted living facility is not required to provide a caregiver to certain residents; revising the entities to which the compassionate use registry must be accessible; requiring the department to adopt certain rules by a specified date; authorizing the department to charge a fee for identification cards; requiring the department to begin issuing identification cards to qualified registrants by a specific date; providing requirements for the identification cards; requiring the department to register certain dispensing organizations as medical marijuana treatment centers by a certain date;

requiring the department to register additional medical marijuana treatment centers in accordance with a specified schedule; deleting obsolete provisions; revising the operational requirements for medical marijuana treatment centers; authorizing the department to waive certain requirements under specified circumstances; requiring that certain receptacles be childproof; requiring that additional information be included on certain labels; requiring that a medical marijuana treatment center comply with certain standards in the production and dispensing of edible or food products; requiring a medical marijuana treatment center to enter additional information into the compassionate use registry; restricting the number of dispensing facilities that may dispense marijuana; providing an exception; requiring a medical marijuana treatment center to keep a copy of a transportation manifest in certain vehicles at certain times; requiring the department to establish a quality control program that requires medical marijuana treatment centers to submit samples from each batch or lot of marijuana to an independent testing laboratory; requiring a medical marijuana treatment center to maintain records of all tests conducted; requiring the department to adopt rules to create and oversee the quality control program; providing that the department must license independent testing laboratories; authorizing an independent testing laboratory to collect and accept samples of, possess, store,

transport, and test marijuana; prohibiting a person with an ownership interest in a medical marijuana treatment center from owning an independent testing laboratory; requiring the department to develop rules and a process for licensing requirements; authorizing the department to impose application and renewal fees; specifying that an independent testing laboratory must be certified to perform required tests; requiring the department to suspend or reduce any mandatory testing if the number of licensed and certified independent testing laboratories is insufficient to process the tests necessary to meet the patient demand for medical marijuana treatment centers; providing that an independent testing laboratory may only accept certain samples; requiring the department to adopt rules related to ownership changes or changes in an owner's investment interest; requiring the department to establish, maintain, and control a seed-to-sale tracking system for marijuana; providing applicability; conforming provisions to changes made by the act; providing that certain research institutions may possess, test, transport, and dispose of marijuana subject to certain conditions and as provided by department rule; providing for the use of emergency rulemaking procedures by the department; creating s. 1004.4351, F.S.; providing a short title; providing legislative findings; defining terms; establishing the Coalition for Medical Marijuana Research and Education within the H. Lee Moffitt

Cancer Center and Research Institute, Inc.; providing a purpose for the coalition; establishing the Medical Marijuana Research and Education Board to direct the operations of the coalition; providing for the appointment of board members; providing for terms of office, reimbursement for certain expenses, and the conduct of meetings of the board; authorizing the board to appoint a coalition director; prescribing the duties of the coalition director; requiring the board to advise specified entities and officials regarding medical marijuana research and education in this state; requiring the board to annually adopt a Medical Marijuana Research and Education Plan; providing requirements for the plan; requiring the board to issue an annual report to the Governor and the Legislature by a specified date; specifying responsibilities of the H. Lee Moffitt Cancer Center and Research Institute, Inc.; amending ss. 381.987, 385.211, 499.0295, and 1004.441, F.S.; conforming provisions to changes made by the act; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Section 381.986, Florida Statutes, is amended to read:

381.986 Compassionate use of low-THC ~~and medical~~ cannabis and marijuana.—

(1) LEGISLATIVE INTENT.—

(a) It is the intent of the Legislature to implement s. 29, Art. X of the State Constitution by creating a unified regulatory structure within the framework of this section for the acquisition, cultivation, possession, processing, transfer, transportation, sale, distribution, and dispensing of marijuana, products containing marijuana, related supplies, and educational materials to qualifying patients or their caregivers.

(b) The Legislature intends that all rules adopted by the Department of Health to implement this section be adopted pursuant to s. 120.536(1) or s. 120.54. The Legislature intends that the department use emergency rulemaking procedures pursuant to s. 120.54(4) to adopt rules under this section if necessary to meet any deadline for rulemaking established in s. 29, Art. X of the State Constitution.

(c) Further, the Legislature intends that all registrations for the purposes specified in paragraph (a) be issued solely in accordance with the requirements of this section and all rules adopted under this section.

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

(a) "Cannabis delivery device" means an object used, intended for use, or designed for use in preparing, storing, ingesting, inhaling, or otherwise introducing marijuana ~~low-THC cannabis or medical cannabis~~ into the human body.

(b) "Caregiver" has the same meaning as provided in s. 29, Art. X of the State Constitution.

(c) "Chronic nonmalignant pain" means pain that is caused by a debilitating medical condition or that originates from a debilitating medical condition and persists beyond the usual

course of that debilitating medical condition.

(d) "Close relative" means a spouse, parent, sibling, grandparent, child, or grandchild, whether related by whole or half blood, by marriage, or by adoption.

(e) ~~(b)~~ "Debilitating medical condition" has the same meaning as provided in s. 29, Art. X of the State Constitution ~~"Dispensing organization" means an organization approved by the department to cultivate, process, transport, and dispense low-THC cannabis or medical cannabis pursuant to this section~~.

(f) ~~(c)~~ "Independent testing laboratory" means a laboratory, including the managers, employees, or contractors of the laboratory, which has no direct or indirect interest in a medical marijuana treatment center ~~a dispensing organization~~.

(g) ~~(d)~~ "Legal representative" means the qualifying ~~qualified~~ patient's parent, legal guardian acting pursuant to a court's authorization as required under s. 744.3215(4), health care surrogate acting pursuant to the qualifying ~~qualified~~ patient's written consent or a court's authorization as required under s. 765.113, or an individual who is authorized under a power of attorney to make health care decisions on behalf of the qualifying ~~qualified~~ patient.

(h) ~~(e)~~ "Low-THC cannabis" means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed only by a medical marijuana treatment center ~~from a dispensing organization~~.

(i) ~~(f)~~ "Marijuana" has the same meaning as provided in s. 29, Art. X of the State Constitution ~~"Medical cannabis" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization for medical use by an eligible patient as defined in s. 499.0295~~.

(j) "Medical marijuana treatment center" or "MMTC" has the same meaning as provided in s. 29, Art. X of the State Constitution.

(k) ~~(g)~~ "Medical use" has the same meaning as provided in s. 29, Art. X of the State Constitution ~~means administration of the ordered amount of low-THC cannabis or medical cannabis~~. The term does not include the:

1. Possession, use, or administration of marijuana ~~low-THC cannabis or medical cannabis~~ by smoking.

2. Possession, use, or administration of marijuana that was not purchased or acquired from an MMTC registered with the Department of Health.

3. ~~2.~~ Transfer of marijuana ~~low-THC cannabis or medical cannabis~~ to a person other than the qualifying ~~qualified~~ patient ~~for whom it was ordered~~ or the qualifying ~~qualified~~ patient's caregiver ~~legal representative~~ on behalf of the qualifying ~~qualified~~ patient.

4. Use or administration of any type or amount of marijuana not specified on the qualifying patient's physician certification.

5. ~~3.~~ Use or administration of marijuana ~~low-THC cannabis or~~

~~medical cannabis~~:

a. On any form of public transportation.

b. In any public place.

c. In a qualifying ~~qualified~~ patient's place of employment, if restricted by his or her employer.

d. In a state correctional institution as defined in s. 944.02 or a correctional institution as defined in s. 944.241.

e. On the grounds of a preschool, primary school, or secondary school.

f. On a school bus or in a vehicle, aircraft, or motorboat.

(l) ~~(h)~~ "Qualifying ~~Qualified~~ patient" has the same meaning as provided in s. 29, Art. X of the State Constitution but also includes eligible patients, as that term is defined in s. 499.0295, and patients who are issued a physician certification under subparagraph (3)(a)2. or subparagraph (3)(a)3. A patient is not a qualifying patient unless he or she is registered with the department and has been issued a compassionate use registry identification card ~~means a resident of this state who has been added to the compassionate use registry by a physician licensed under chapter 458 or chapter 459 to receive low-THC cannabis or medical cannabis from a dispensing organization~~.

(m) ~~(i)~~ "Smoking" means burning or igniting a substance and inhaling the smoke. Smoking does not include the use of a vaporizer.

(3) ~~(2)~~ PHYSICIAN CERTIFICATION ~~ORDERING~~.—

(a) A physician is authorized to issue a physician certification to:

1. A patient suffering from a debilitating medical condition, which allows the patient to receive marijuana for the

patient's medical use;

2. A ~~order low-THC cannabis to treat a qualified~~ patient suffering from ~~cancer or~~ a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms, which allows the patient to receive low-THC cannabis for the patient's medical use;

3. A patient suffering from chronic nonmalignant pain, if the physician has diagnosed an underlying debilitating medical condition as the cause of the pain, which allows the patient to receive marijuana for the patient's medical use ~~order low-THC cannabis~~ to alleviate the patient's pain ~~symptoms of such disease, disorder, or condition, if no other satisfactory alternative treatment options exist for the qualified patient~~;

4. ~~order medical cannabis to treat~~ An eligible patient as defined in s. 499.0295, which allows the patient to receive marijuana for the patient's medical use; or

5. A patient who is not a resident of this state; who qualifies under subparagraph 1., subparagraph 2., subparagraph 3., or subparagraph 4.; and who can lawfully obtain marijuana through a medical marijuana program in the state that he or she resides in.

(b) In the physician certification, the physician may also specify one or more ~~or order a~~ cannabis delivery devices to assist with ~~device for~~ the patient's medical use of marijuana. ~~low-THC cannabis or medical cannabis,~~

(c) A physician may certify a patient and specify a delivery device under paragraphs (a) and (b) only if the physician:

1. ~~(a)~~ Holds an active, unrestricted license as a physician

under chapter 458 or an osteopathic physician under chapter 459;

~~(b) Has treated the patient for at least 3 months immediately preceding the patient's registration in the compassionate use registry;~~

2.~~(c)~~ Has successfully completed the course and examination required under paragraph (5)(a) ~~(4)(a)~~;

3. Has conducted a physical examination and made a full assessment of the medical history of the patient;

4. Has determined that, in the physician's professional opinion, the patient meets one or more of the criteria specified in paragraph (a);

5.~~(d)~~ Has determined that the medical use of marijuana would likely outweigh the potential health risks to ~~of treating the patient with low-THC cannabis or medical cannabis are reasonable in light of the potential benefit to~~ the patient. If a patient is younger than 18 years of age:~~,~~

a. A second physician must concur with this determination, and such determination must be documented in the patient's medical record;

b. Only a parent, legal guardian, caregiver, or health care provider may assist the qualifying patient in the purchasing and administering of marijuana for medical use; and

c. The qualifying patient may not purchase marijuana;

6.~~(c)~~ Registers as the patient's physician ~~orderer of low-THC cannabis or medical cannabis for the named patient~~ on the compassionate use registry maintained by the department and updates the registry to reflect ~~the contents of the order, including~~ the amount of marijuana ~~low-THC cannabis or medical cannabis~~ that will provide the patient with not more than a 90-

day ~~45-day~~ supply and a cannabis delivery device needed by the patient for the medical use of marijuana ~~low-THC cannabis or medical cannabis~~. A physician may certify an amount greater than a 90-day supply of marijuana if the physician has a reasonable belief that the patient will use the additional marijuana in a medically appropriate way. If the physician's recommended amount of marijuana for a 90-day supply changes, the physician must ~~also~~ update the registry within 7 days after the ~~any~~ change is made ~~to the original order to reflect the change~~. The physician shall deactivate the registration of the patient ~~and the patient's legal representative~~ when the physician no longer recommends the medical use of marijuana for the patient ~~treatment is discontinued~~;

7.~~(f)~~ Maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the marijuana ~~low-THC cannabis or medical cannabis~~;

8.~~(g)~~ Submits the patient treatment plan quarterly to the University of Florida College of Pharmacy for research on the safety and efficacy of marijuana ~~low-THC cannabis and medical cannabis~~ on patients; and

9.~~(h)~~ Obtains the voluntary written informed consent of the patient or the patient's legal representative to treatment with marijuana ~~low-THC cannabis~~ after sufficiently explaining the current state of knowledge in the medical community of the effectiveness of treatment of the patient's condition with marijuana ~~low-THC cannabis, the medically acceptable alternatives,~~ and the potential risks and side effects. If the patient is a minor, the patient's parent or legal guardian must

consent to treatment in writing. If the patient is an eligible patient as defined in s. 499.0295, the physician must obtain written informed consent as defined in and required by s. 499.0295.~~;~~

(d) At least annually, a physician must recertify the qualifying patient pursuant to paragraph (c).

~~(i) Obtains written informed consent as defined in and required under s. 499.0295, if the physician is ordering medical cannabis for an eligible patient pursuant to that section; and~~

(e)~~(j)~~ A physician may not issue a physician certification if the physician is ~~not~~ a medical director employed by an MMTC ~~a dispensing organization~~.

(f) An order for low-THC cannabis or medical cannabis issued pursuant to former s. 381.986, Florida Statutes 2016, and registered with the compassionate use registry on the effective date of this act, shall be considered a physician certification issued pursuant to this subsection. The details and expiration date of such certification must be identical to the details and expiration date of the order as logged in the compassionate use registry. Until the department begins issuing compassionate use registry identification cards, all patients with such orders shall be considered qualifying patients, notwithstanding the requirement that a qualifying patient have a compassionate use registry identification card.

(4)~~(3)~~ PROHIBITED ACTS ~~PENALTIES~~.~~—~~

(a) A physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the physician issues a physician certification for marijuana to ~~orders low-THC cannabis for~~ a patient in a manner other than as

required in subsection (3) ~~without a reasonable belief that the patient is suffering from:~~

~~1. Cancer or A physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms that can be treated with low-THC cannabis; or~~

~~2. Symptoms of cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms that can be alleviated with low-THC cannabis~~.

~~(b) A physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the physician orders medical cannabis for a patient without a reasonable belief that the patient has a terminal condition as defined in s. 499.0295.~~

(b)~~(c)~~ A person who fraudulently represents that he or she has a debilitating medical condition ~~cancer~~, a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms, chronic nonmalignant pain, or a terminal condition as defined in s. 499.0295 to a physician for the purpose of being issued a physician certification for marijuana ~~ordered low-THC cannabis, medical cannabis,~~ or a cannabis delivery device by such physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c)~~(d)~~ A qualifying patient ~~an eligible patient as defined in s. 499.0295~~ who uses marijuana ~~medical cannabis~~, and such patient's caregiver ~~legal representative~~ who administers marijuana ~~medical cannabis~~, in plain view of or in a place open to the general public, on the grounds of a school, or in a

school bus, vehicle, aircraft, or motorboat, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) A qualifying patient or caregiver who cultivates marijuana or who purchases or acquires marijuana from any person or entity other than an MMTC commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(e) A caregiver who violates any of the applicable provisions of this section or applicable department rules commits, upon the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and, upon the second and subsequent offenses, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(f) ~~(c)~~ A physician who issues a physician certification for marijuana ~~orders low-THC cannabis, medical cannabis,~~ or a cannabis delivery device and receives compensation from an MMTC ~~a dispensing organization~~ related to issuing the physician certification for marijuana ~~the ordering of low-THC cannabis, medical cannabis,~~ or a cannabis delivery device is subject to disciplinary action under the applicable practice act and s. 456.072(1)(n).

(g) An MMTC that advertises or holds out to the public that it may provide services other than services for which it is registered to provide violates this section, and the department may impose a fine on the MMTC pursuant to paragraph (10)(h).

(h) A person or entity that offers or advertises services as an MMTC without registering as an MMTC with the department violates this section. The operation or maintenance of a

facility as an MMTC, or the performance of a service that requires registration, without proper registration is a violation of this section.

1. If after receiving notification from the department, such person or entity fails to cease operation, the department may impose an administrative fine of up to $10,000 per violation. Each day of continued operation is a separate offense.

2. The department or any state attorney may, in addition to other remedies provided in this section, bring an action for an injunction to restrain any unauthorized activity or to enjoin the future operation or maintenance of the unauthorized dispensing organization or entity or the performance of any service in violation of this section until compliance with this section and department rules has been demonstrated to the satisfaction of the department.

3. If found to be in violation of this paragraph, the department may assess reasonable investigative and legal costs for prosecution of the violation against the person or entity.

(5) ~~(4)~~ PHYSICIAN EDUCATION.—

(a) Before a physician may issue a physician certification pursuant to subsection (3) ~~ordering low-THC cannabis, medical cannabis, or a cannabis delivery device for medical use by a patient in this state~~, the appropriate board shall require the ~~ordering~~ physician to successfully complete a 4-hour ~~an 8-hour~~ course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which ~~that~~ encompasses the clinical indications for the appropriate use of marijuana ~~low-THC cannabis and medical cannabis~~, the

appropriate cannabis delivery devices, the contraindications for such use, and the relevant state and federal laws governing the issuance of physician certifications ~~ordering~~, as well as dispensing~~,~~ and possessing ~~of~~ these substances and devices. The course and examination shall be administered at least quarterly ~~annually~~. Successful completion of the course may be used by a physician to satisfy 4 hours ~~8 hours~~ of the continuing medical education requirements required by his or her respective board for licensure renewal. This course may be offered in a distance learning format, including an electronic, online format that is available on request. Physicians who have completed an 8-hour course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which encompasses the clinical indications for the appropriate use of marijuana and who are registered in the compassionate use registry on the effective date of this act are deemed to meet the requirements of this paragraph.

(b) The appropriate board shall require the medical director of each MMTC ~~dispensing organization~~ to hold an active, unrestricted license as a physician under chapter 458 or as an osteopathic physician under chapter 459 and successfully complete a 2-hour course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which ~~that~~ encompasses appropriate safety procedures and knowledge of marijuana ~~low-THC cannabis, medical cannabis,~~ and cannabis delivery devices.

(c) Successful completion of the course and examination specified in paragraph (a) is required for every physician who issues a physician certification for marijuana ~~orders low-THC~~

~~cannabis, medical cannabis, or a cannabis delivery device~~ each time such physician renews his or her license. ~~In addition, successful completion of the course and examination specified in paragraph (b) is required for the medical director of each dispensing organization each time such physician renews his or her license.~~

(d) A physician who fails to comply with this subsection and issues a physician certification for marijuana ~~who orders low-THC cannabis, medical cannabis,~~ or a cannabis delivery device may be subject to disciplinary action under the applicable practice act and under s. 456.072(1)(k).

(6) CAREGIVERS.—

(a) During the course of registration with the department for inclusion on the compassionate use registry, or at any time while registered, a qualifying patient may designate an individual as his or her caregiver to assist him or her with the medical use of marijuana. The designated caregiver must be 21 years of age or older, unless the patient is a close relative of the caregiver; must agree in writing to be the qualifying patient's caregiver; may not receive compensation, other than actual expenses incurred, for assisting the qualifying patient with the medical use of marijuana, unless the caregiver is acting pursuant to employment in a licensed facility in accordance with subparagraph (c)2.; and must pass a level 2 screening pursuant to chapter 435, unless the patient is a close relative of the caregiver.

(b) A qualifying patient may have only one designated caregiver at any given time unless all of the patient's caregivers are his or her close relatives or legal

representatives.

(c) A caregiver may assist only one qualifying patient at any given time unless:

1. All qualifying patients the caregiver is assisting are close relatives of each other and the caregiver is the legal representative of at least one of the patients; or

2. All qualifying patients the caregiver is assisting are receiving hospice services, or are residents, in the same assisted living facility, nursing home, or other licensed facility and have requested the assistance of that caregiver with the medical use of marijuana; the caregiver is an employee of the hospice or licensed facility; and the caregiver provides personal care or services directly to clients of the hospice or licensed facility as a part of his or her employment duties at the hospice or licensed facility.

(d) The department must register a caregiver on the compassionate use registry and issue him or her a caregiver identification card if he or she is designated by a qualifying patient pursuant to paragraph (a) and meets all of the requirements of this subsection and department rule.

(e) A nursing home or assisted living facility may not prevent a qualifying patient residing in the nursing home or assisted living facility from hiring a caregiver. A nursing home or assisted living facility may prohibit its employees from acting as caregivers to residents of the nursing home or assisted living facility. A nursing home or assisted living facility is not required to provide a caregiver to a resident who is a qualifying patient.

(7)~~(5)~~ DUTIES OF THE DEPARTMENT.—The department shall:

(a) Create and maintain a secure, electronic, and online compassionate use registry for the registration of physicians, patients, and caregivers ~~the legal representatives of patients~~ as provided under this section. The registry must be accessible to:

1. Practitioners licensed under chapter 458 or chapter 459, to ensure proper care for patients requesting physician certifications;

2. Practitioners licensed to prescribe prescription drugs, to ensure proper care for patients before prescribing medications that may interact with the medical use of marijuana;

3. Law enforcement agencies, to verify the authorization of a qualifying patient or a patient's caregiver to possess marijuana or a cannabis delivery device; and

4. MMTCs, to ~~a dispensing organization to~~ verify the authorization of a qualifying patient or a patient's caregiver ~~legal representative~~ to possess marijuana ~~low-THC cannabis, medical cannabis,~~ or a cannabis delivery device and to record the marijuana ~~low-THC cannabis, medical cannabis,~~ or cannabis delivery device dispensed.

The registry must prevent ~~an~~ active registration of a patient by multiple physicians.

(b) By July 3, 2017, adopt rules establishing procedures for the issuance, annual renewal, suspension, and revocation of compassionate use registry identification cards for patients and caregivers. The department may charge a reasonable fee associated with the issuance and renewal of patient and caregiver identification cards. By October 3, 2017, the

department shall begin issuing identification cards to adult patients who have a physician certification that meets the requirements of subsection (3); minor patients who have a physician certification that meets the requirements of subsection (3) and the written consent of a parent or legal guardian; and caregivers registered pursuant to subsection (6). In addition to the other requirements of this section, the department may issue a compassionate use registry identification card to a patient who is not a resident of this state only after the department has verified that the patient can lawfully obtain marijuana through a medical marijuana program in the state that he or she resides in. Patient and caregiver identification cards must be resistant to counterfeiting and tampering and must include at least the following:

1. The name, address, and date of birth of the patient or caregiver, as appropriate;

2. A full-face, passport-type, color photograph of the patient or caregiver, as appropriate, taken within the 90 days immediately preceding registration;

3. Designation of the cardholder as a patient or caregiver;

4. A unique identification number for the patient or caregiver which is matched to the identification number used for such person in the department's compassionate use registry. A caregiver's identification number and file in the compassionate use registry must be linked to the file of the patient or patients the caregiver is assisting so that the caregiver's status may be verified for each patient individually;

5. The expiration date, which shall be 1 year after the date of issuance of the identification card or the date

treatment ends as provided in the patient's physician certification, whichever occurs first; and

6. For caregivers who are assisting three or fewer qualifying patients, the names and identification number of the qualifying patient or patients that the caregiver is assisting.

(c) As soon as practicable after the effective date of this act, update its records by registering each dispensing organization approved pursuant to chapter 2014-157, Laws of Florida, or chapter 2016-123, Laws of Florida, as an MMTC with an effective registration date that coincides with that dispensing organization's date of approval as a dispensing organization. On the effective date of this act, all dispensing organizations approved pursuant to chapter 2014-157, Laws of Florida, or chapter 2016-123, Laws of Florida, are deemed to be registered MMTCs. The department may not require a dispensing organization approved pursuant to chapter 2014-157, Laws of Florida, or chapter 2016-123, Laws of Florida, to submit an application and may not charge the dispensing organization an application or registration fee for the initial registration of that dispensing organization as an MMTC pursuant to this section. For purposes of the requirement that an MMTC comply with the representations made in its application pursuant to subsection (8), an MMTC registered pursuant to this paragraph shall continue to comply with the representations made in its application for approval as a dispensing organization, including any revision authorized by the department before the effective date of this act. After the effective date of this act, the department may grant variances from the representations made in a dispensing organization's application for approval pursuant to

subsection (8). For purposes of the definition of the term "marijuana" in s. 29, of Art. X of the State Constitution, an MMTC is deemed to be a dispensing organization as that term is defined in former s. 381.986(1)(a), Florida Statutes 2014 ~~Authorize the establishment of five dispensing organizations to ensure reasonable statewide accessibility and availability as necessary for patients registered in the compassionate use registry and who are ordered low-THC cannabis, medical cannabis, or a cannabis delivery device under this section, one in each of the following regions: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida~~.

(d) By October 3, 2017, register five additional MMTCs with at least one of the MMTCs being an applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association.

(e) Within 6 months after each instance of the registration of 75,000 qualifying patients with the compassionate use registry, register four additional MMTCs if a sufficient number of MMTC applicants meet the registration requirements established in this section and by department rule.

(f) Not issue more than one registration as an MMTC to a person or an entity.

(g) ~~The department shall~~ Develop an application form for registration as an MMTC and impose an initial application and biennial renewal fee that is sufficient to cover the costs of administering this section. To be registered as an MMTC, the ~~an~~ applicant ~~for approval as a dispensing organization~~ must be able

to demonstrate:

1. That the applicant has been registered to do business in this state for the previous 5 consecutive years before submitting the application.

2.~~1.~~ The technical and technological ability to cultivate and produce low-THC cannabis and marijuana. ~~The applicant must possess a valid certificate of registration issued by the Department of Agriculture and Consumer Services pursuant to s. 581.131 that is issued for the cultivation of more than 400,000 plants, be operated by a nurseryman as defined in s. 581.011, and have been operated as a registered nursery in this state for at least 30 continuous years.~~

3.~~2.~~ The ability to secure the premises, resources, and personnel necessary to operate as an MMTC ~~a dispensing organization~~.

4.~~3.~~ The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances.

5.~~4.~~ An infrastructure reasonably located to dispense low-THC cannabis and marijuana to registered qualifying patients statewide ~~or regionally as determined by the department~~.

6.~~5.~~ The financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financials to the department. Upon approval, the applicant must post a $5 million performance bond. However, upon an MMTC ~~a dispensing organization's~~ serving at least 1,000 qualifying ~~qualified~~ patients, the MMTC ~~dispensing organization~~ is only required to maintain a $2 million performance bond.

7.~~6.~~ That all owners and managers have been fingerprinted and have successfully passed a level 2 background screening pursuant to s. 435.04.

8.~~7.~~ The employment of a medical director to supervise the activities of the MMTC ~~dispensing organization~~.

~~(c) Upon the registration of 250,000 active qualified patients in the compassionate use registry, approve three dispensing organizations, including, but not limited to, an applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association, which must meet the requirements of subparagraphs (b)2.-7. and demonstrate the technical and technological ability to cultivate and produce low-THC cannabis.~~

(h)~~(d)~~ Allow an MMTC ~~a dispensing organization~~ to make a wholesale purchase of marijuana ~~low-THC cannabis or medical cannabis~~ from, or a distribution of marijuana ~~low-THC cannabis or medical cannabis~~ to, another MMTC ~~dispensing organization~~.

(i)~~(e)~~ Monitor physician registration in the compassionate use registry and the issuance of physician certifications pursuant to subsection (3) ~~ordering of low-THC cannabis, medical cannabis, or a cannabis delivery device~~ for ~~ordering~~ practices that could facilitate unlawful diversion or misuse of marijuana ~~low-THC cannabis, medical cannabis,~~ or ~~a~~ cannabis delivery devices ~~device~~ and take disciplinary action as indicated.

(8)~~(6)~~ MEDICAL MARIJUANA TREATMENT CENTERS ~~DISPENSING ORGANIZATION~~.~~—~~Each MMTC must register with the department. A registered MMTC ~~An approved dispensing organization~~ must, at all

times, maintain compliance with paragraph (7)(g), ~~the criteria demonstrated for selection and approval as a dispensing organization under subsection(5) and~~ the criteria required in this subsection, and all representations made to the department in the MMTC's application for registration. Upon request, the department may grant an MMTC one or more variances from the representations made in the MMTC's application. Consideration of such a variance shall be based upon the individual facts and circumstances surrounding the request. A variance may not be granted unless the requesting MMTC can demonstrate to the department that it has a proposed alternative to the specific representation made in its application which fulfills the same or a similar purpose as the specific representation in a way that the department can reasonably determine will not be a lower standard than the specific representation in the application.

(a) When growing marijuana ~~low-THC cannabis or medical cannabis~~, an MMTC ~~a dispensing organization~~:

1. May use pesticides determined by the department, after consultation with the Department of Agriculture and Consumer Services, to be safely applied to plants intended for human consumption, but may not use pesticides designated as restricted-use pesticides pursuant to s. 487.042.

2. Must grow marijuana ~~low-THC cannabis or medical cannabis~~ within an enclosed structure and in a room separate from any other plant.

3. Must inspect seeds and growing plants for plant pests that endanger or threaten the horticultural and agricultural interests of the state, notify the Department of Agriculture and Consumer Services within 10 calendar days after a determination

that a plant is infested or infected by such plant pest, and implement and maintain phytosanitary policies and procedures.

4. Must perform fumigation or treatment of plants, or the removal and destruction of infested or infected plants, in accordance with chapter 581 and any rules adopted thereunder.

(b) When processing marijuana ~~low-THC cannabis or medical cannabis~~, an MMTC ~~a dispensing organization~~ must:

1. Process the marijuana ~~low-THC cannabis or medical cannabis~~ within an enclosed structure and in a room separate from other plants or products.

2. Have the marijuana tested by an independent testing laboratory to ensure it meets the standards established by the department's quality control program ~~Test the processed low-THC cannabis and medical cannabis~~ before it is ~~they are~~ dispensed. ~~Results must be verified and signed by two dispensing organization employees. Before dispensing low-THC cannabis, the dispensing organization must determine that the test results indicate that the low-THC cannabis meets the definition of low-THC cannabis and, for medical cannabis and low-THC cannabis, that all medical cannabis and low-THC cannabis is safe for human consumption and free from contaminants that are unsafe for human consumption. The dispensing organization must retain records of all testing and samples of each homogenous batch of cannabis and low-THC cannabis for at least 9 months. The dispensing organization must contract with an independent testing laboratory to perform audits on the dispensing organization's standard operating procedures, testing records, and samples and provide the results to the department to confirm that the low-THC cannabis or medical cannabis meets the requirements of this section and that the medical cannabis and low-THC cannabis is safe for human consumption.~~

3. Package the marijuana ~~low-THC cannabis or medical cannabis~~ in compliance with the United States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.

4. Package the marijuana ~~low-THC cannabis or medical cannabis~~ in a childproof receptacle that has a firmly affixed and legible label stating the following information:

a. A statement that the marijuana ~~low-THC cannabis or medical cannabis~~ meets the requirements of subparagraph 2.;

b. The name of the MMTC ~~dispensing organization~~ from which the marijuana ~~medical cannabis or low-THC cannabis~~ originates; ~~and~~

c. The batch number and harvest number from which the marijuana ~~medical cannabis or low-THC cannabis~~ originates; and

d. The concentration of tetrahydrocannabinol and cannabidiol in the product.

e. Any other information required by department rule

~~5. Reserve two processed samples from each batch and retain such samples for at least 9 months for the purpose of testing pursuant to the audit required under subparagraph 2~~.

(c) When dispensing marijuana ~~low-THC cannabis, medical cannabis,~~ or a marijuana ~~cannabis~~ delivery device, an MMTC ~~a dispensing organization~~:

1. May not dispense more than the ~~a 45-day~~ supply of marijuana authorized by a qualifying patient's physician certification ~~low-THC cannabis or medical cannabis~~ to a qualifying patient or caregiver ~~the patient's legal representative~~.

2. Must ensure that the ~~have the dispensing organization's~~ employee who dispenses the marijuana ~~low-THC cannabis, medical cannabis,~~ or marijuana ~~a cannabis~~ delivery device enters ~~enter~~ into the compassionate use registry his or her name or unique employee identifier.

3. Must verify that the qualifying patient and the caregiver, if applicable, both have an active and valid compassionate use registry identification card and that the amount and type of marijuana dispensed match the physician certification in the compassionate use registry for that qualifying patient ~~that a physician has ordered the low-THC cannabis, medical cannabis, or a specific type of a cannabis delivery device for the patient~~.

4. Must label the marijuana with the recommended dose for the qualifying patient receiving the marijuana.

5.~~4.~~ May not dispense or sell any other type of marijuana ~~cannabis~~, alcohol, or illicit drug-related product, including pipes, bongs, or wrapping papers, other than a ~~physician-ordered~~ cannabis delivery device required for the medical use of marijuana which is specified in a physician certification ~~low-THC cannabis or medical cannabis, while dispensing low-THC cannabis or medical cannabis~~. An MMTC may produce and dispense marijuana as an edible or food product but may not produce such items in a format designed to be attractive to children. In addition to the requirements of this section and department rule, food products produced by an MMTC must meet all food safety standards established in state and federal law, including, but not limited to, the identification of the serving size and the amount of tetrahydrocannabinol in each serving.

~~5. Must verify that the patient has an active registration in the compassionate use registry, the patient or patient's legal representative holds a valid and active registration card, the order presented matches the order contents as recorded in the registry, and the order has not already been filled.~~

6. Must, upon dispensing the marijuana ~~low-THC cannabis, medical cannabis,~~ or marijuana ~~cannabis~~ delivery device, record in the registry the date, time, quantity, and form of marijuana ~~low-THC cannabis or medical cannabis~~ dispensed; ~~and~~ the type of marijuana ~~cannabis~~ delivery device dispensed; and the name and compassionate use registry identification number of the qualifying patient or caregiver to whom the marijuana delivery device was dispensed.

7. May not dispense marijuana from more than three dispensing facilities. This subparagraph does not apply to MMTC retail facilities that only dispense low-THC cannabis and sell marijuana delivery devices to qualified patients.

(d) To ensure the safety and security of its premises and any off-site storage facilities, and to maintain adequate controls against the diversion, theft, and loss of marijuana ~~low-THC cannabis, medical cannabis,~~ or marijuana ~~cannabis~~ delivery devices, an MMTC ~~a dispensing organization~~ shall:

1.a. Maintain a fully operational security alarm system that secures all entry points and perimeter windows and is equipped with motion detectors; pressure switches; and duress, panic, and hold-up alarms; or

b. Maintain a video surveillance system that records continuously 24 hours each day and meets at least one of the following criteria:

(I) Cameras are fixed in a place that allows for the clear identification of persons and activities in controlled areas of the premises. Controlled areas include grow rooms, processing rooms, storage rooms, disposal rooms or areas, and point-of-sale rooms;

(II) Cameras are fixed in entrances and exits to the premises, which shall record from both indoor and outdoor, or ingress and egress, vantage points;

(III) Recorded images must clearly and accurately display the time and date; or

(IV) Retain video surveillance recordings for a minimum of 45 days, or longer upon the request of a law enforcement agency.

2. Ensure that the MMTC's ~~organization's~~ outdoor premises have sufficient lighting from dusk until dawn.

3. Implement ~~Establish and maintain~~ a tracking system using a vendor approved by the department which ~~that~~ traces the marijuana ~~low-THC cannabis or medical cannabis~~ from seed to sale. The tracking system must ~~shall~~ include notification of key events as determined by the department, including when cannabis seeds are planted, when cannabis plants are harvested and destroyed, and when marijuana ~~low-THC cannabis or medical cannabis~~ is transported, sold, stolen, diverted, or lost.

4. Not dispense from its premises marijuana ~~low-THC cannabis, medical cannabis,~~ or a cannabis delivery device between the hours of 9 p.m. and 7 a.m., but may perform all other operations and deliver marijuana ~~low-THC cannabis and medical cannabis~~ to qualifying ~~qualified~~ patients 24 hours each day.

5. Store marijuana ~~low-THC cannabis or medical cannabis~~ in

a secured, locked room or a vault.

6. Require at least two of its employees, or two employees of a security agency with whom it contracts, to be on the premises at all times.

7. Require each employee or contractor to wear a photo identification badge at all times while on the premises.

8. Require each visitor to wear a visitor's pass at all times while on the premises.

9. Implement an alcohol and drug-free workplace policy.

10. Report to local law enforcement within 24 hours after it is notified or becomes aware of the theft, diversion, or loss of marijuana ~~low-THC cannabis or medical cannabis~~.

(e) To ensure the safe transport of marijuana ~~low-THC cannabis or medical cannabis~~ to MMTC ~~dispensing organization~~ facilities, independent testing laboratories, or qualifying patients, the MMTC ~~dispensing organization~~ must:

1. Maintain a transportation manifest, which must be retained for at least 1 year. A copy of the manifest must be in the vehicle at all times when transporting marijuana.

2. Ensure only vehicles in good working order are used to transport marijuana ~~low-THC cannabis or medical cannabis~~.

3. Lock marijuana ~~low-THC cannabis or medical cannabis~~ in a separate compartment or container within the vehicle.

4. Require at least two persons to be in a vehicle transporting marijuana ~~low-THC cannabis or medical cannabis~~, and require at least one person to remain in the vehicle while the marijuana ~~low-THC cannabis or medical cannabis~~ is being delivered.

5. Provide specific safety and security training to

employees transporting or delivering marijuana ~~low-THC cannabis or medical cannabis~~.

(9) MARIJUANA QUALITY CONTROL PROGRAM AND INDEPENDENT TESTING LABORATORY LICENSURE.—

(a) The department shall establish a quality control program requiring marijuana to be tested by an independent testing laboratory for potency and contaminants before sale to qualifying patients and caregivers.

1. The quality control program must require MMTCs to submit samples from each batch or lot of marijuana harvested or processed to an independent testing laboratory for testing to ensure, at a minimum, that the labeling of the potency of tetrahydrocannabinol and all other marketed cannabinoids or terpenes is accurate and that the marijuana dispensed to qualifying patients is safe for human consumption.

2. An MMTC must maintain records of all tests conducted, including the results of each test and any additional information, as required by the department.

3. The department shall adopt all rules necessary to create and oversee the quality control program, which must include, at a minimum:

a. Permissible levels of variation in potency labeling and standards requiring tetrahydrocannabinol in edible marijuana products to be distributed consistently throughout the product;

b. Permissible levels of contaminants and mandatory testing for contaminants to confirm that the tested marijuana is safe for human consumption. This testing must include, but is not limited to, testing for microbiological impurity, residual solvents, and pesticide residues;

c. The destruction of marijuana determined to be inaccurately labeled or unsafe for human consumption after the MMTC has an opportunity to take remedial action;

d. The collection, storage, handling, recording, and destruction of samples of marijuana by independent testing laboratories; and

e. Security, inventory tracking, and record retention.

(b) The department must license all independent testing laboratories to ensure that all marijuana is tested for potency and contaminants in accordance with the department's quality control program. An independent testing laboratory may collect and accept samples of, and possess, store, transport, and test marijuana. An independent testing laboratory may not be owned by a person who also possesses an ownership interest in an MMTC. A clinical laboratory that is licensed by the Agency for Health Care Administration pursuant to part I of chapter 483 and that performs nonwaived clinical tests is exempt from the requirement to be licensed by the department pursuant to this paragraph but must be certified to perform all required tests pursuant to subparagraph 2.

1. The department shall develop rules establishing independent testing laboratory license requirements and a process for licensing independent testing laboratories; develop an application form for an independent testing laboratory license; and impose an initial application fee and a biennial renewal fee sufficient to cover the costs of administering this subsection.

2. In addition to licensure, an independent testing laboratory must be certified to perform all required tests by

the department. The department must issue a certification to an independent testing laboratory that has been certified by a third-party laboratory certification body approved by the department. The department shall establish reasonable rules for the certification and operation of independent testing laboratories. Rules for certification must, at a minimum, address standards relating to:

a. Personnel qualifications;

b. Equipment and methodology;

c. Proficiency testing;

d. Tracking;

e. Sampling;

f. Chain of custody;

g. Record and sample retention;

h. Reporting;

i. Audit and inspection; and

j. Security.

3. The department shall suspend or reduce any mandatory testing requirement specified in its quality control program if the number of licensed and certified independent testing laboratories is insufficient to process the tests necessary to meet the patients' demand for marijuana.

4. An independent testing laboratory may accept only samples composed of marijuana which are obtained from a sample source approved by the department. At a minimum, these sources must include an MMTC, a researcher affiliated with an accredited university or research hospital, a qualifying patient, and a caregiver.

(10) ~~(7)~~ DEPARTMENT AUTHORITY AND RESPONSIBILITIES.—

(a) The department may conduct announced or unannounced inspections of MMTCs ~~dispensing organizations~~ to determine compliance with this section or rules adopted pursuant to this section.

(b) The department shall inspect an MMTC ~~a dispensing organization~~ upon complaint or notice provided to the department that the MMTC ~~dispensing organization~~ has dispensed marijuana ~~low-THC cannabis or medical cannabis~~ containing any mold, bacteria, or other contaminant that may cause or has caused an adverse effect to human health or the environment.

(c) The department shall conduct at least a biennial inspection of each MMTC ~~dispensing organization~~ to evaluate the MMTC's ~~dispensing organization's~~ records, personnel, equipment, processes, security measures, sanitation practices, and quality assurance practices.

(d) The department shall adopt by rule a process for approving changes in MMTC ownership or a change in an MMTC owner's investment interest. This process must include specific criteria for the approval or denial of an application for change of ownership or a change in investment interest and procedures for screening applicants' criminal and financial histories.

(e) The department shall establish, maintain, and control a computer software tracking system that traces marijuana from seed to sale and allows real-time, 24-hour access by the department to data from all MMTCs and independent testing laboratories. The tracking system must, at a minimum, include notification of when marijuana seeds are planted, when marijuana plants are harvested and destroyed, and when marijuana is transported, sold, stolen, diverted, or lost. Each MMTC shall

use the seed-to-sale tracking system selected by the department.

(f) ~~(d)~~ The department may enter into interagency agreements with the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of Transportation, the Department of Highway Safety and Motor Vehicles, and the Agency for Health Care Administration, and such agencies are authorized to enter into an interagency agreement with the department, to conduct inspections or perform other responsibilities assigned to the department under this section.

(g) ~~(e)~~ The department must make a list of all approved MMTCs, ~~dispensing organizations and qualified ordering~~ physicians who are qualified to issue physician certifications, and medical directors publicly available on its website.

~~(f) The department may establish a system for issuing and renewing registration cards for patients and their legal representatives, establish the circumstances under which the cards may be revoked by or must be returned to the department, and establish fees to implement such system. The department must require, at a minimum, the registration cards to:~~

~~1. Provide the name, address, and date of birth of the patient or legal representative.~~

~~2. Have a full-face, passport-type, color photograph of the patient or legal representative taken within the 90 days immediately preceding registration.~~

~~3. Identify whether the cardholder is a patient or legal representative.~~

~~4. List a unique numeric identifier for the patient or legal representative that is matched to the identifier used for~~

~~such person in the department's compassionate use registry.~~

~~5. Provide the expiration date, which shall be 1 year after the date of the physician's initial order of low-THC cannabis or medical cannabis.~~

~~6. For the legal representative, provide the name and unique numeric identifier of the patient that the legal representative is assisting.~~

~~7. Be resistant to counterfeiting or tampering.~~

(h) ~~(g)~~ The department may impose reasonable fines not to exceed $10,000 on an MMTC ~~a dispensing organization~~ for any of the following violations:

1. Violating this section, s. 499.0295, or department rule.

2. Failing to maintain qualifications for registration with the department ~~approval~~.

3. Endangering the health, safety, or security of a qualifying ~~qualified~~ patient.

4. Improperly disclosing personal and confidential information of a qualifying ~~the qualified~~ patient.

5. Attempting to procure MMTC registration with the department ~~dispensing organization approval~~ by bribery, fraudulent misrepresentation, or extortion.

6. Any owner or manager of the MMTC being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the business of an MMTC ~~a dispensing organization~~.

7. Making or filing a report or record that the MMTC ~~dispensing organization~~ knows to be false.

8. Willfully failing to maintain a record required by this

section or department rule.

9. Willfully impeding or obstructing an employee or agent of the department in the furtherance of his or her official duties.

10. Engaging in fraud or deceit, negligence, incompetence, or misconduct in the business practices of an MMTC ~~a dispensing organization~~.

11. Making misleading, deceptive, or fraudulent representations in or related to the business practices of an MMTC ~~a dispensing organization~~.

12. Having a license or the authority to engage in any regulated profession, occupation, or business that is related to the business practices of an MMTC ~~a dispensing organization~~ suspended, revoked, or otherwise acted against by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law.

13. Violating a lawful order of the department or an agency of the state, or failing to comply with a lawfully issued subpoena of the department or an agency of the state.

(i) ~~(h)~~ The department may suspend, revoke, or refuse to renew an MMTC's registration with the department ~~a dispensing organization's approval~~ if the MMTC ~~a dispensing organization~~ commits a violation specified ~~any of the violations~~ in paragraph (h) ~~(g)~~.

(j) ~~(i)~~ The department shall renew an MMTC's registration with the department ~~the approval of a dispensing organization~~ biennially if the MMTC ~~dispensing organization~~ meets the requirements of this section and pays the biennial renewal fee.

(k) ~~(j)~~ The department may adopt rules necessary to implement this section.

(11) ~~(8)~~ PREEMPTION.—

(a) All matters regarding the regulation of the cultivation and processing of marijuana ~~medical cannabis or low-THC cannabis~~ by MMTCs ~~dispensing organizations~~ are preempted to the state.

(b) A municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of MMTCs ~~dispensing organizations~~ located within its municipal boundaries. A county may determine by ordinance the criteria for the number, location, and other permitting requirements that do not conflict with state law or department rule for all dispensing facilities of MMTCs ~~dispensing organizations~~ located within the unincorporated areas of that county.

(12) ~~(9)~~ EXCEPTIONS TO OTHER LAWS.—

(a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, a qualifying ~~qualified~~ patient, or a caregiver who has obtained a valid compassionate use registry identification card from the department, ~~and the qualified patient's legal representative~~ may purchase from an MMTC, and possess for the qualifying patient's medical use, up to the amount of marijuana in the physician certification ~~low-THC cannabis or medical cannabis ordered for the patient~~, but not more than a 90-day ~~45-day~~ supply, and a cannabis delivery device specified in the physician certification ~~ordered~~ for the qualifying patient.

(b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or

any other provision of law, but subject to the requirements of this section, an MMTC ~~an approved dispensing organization~~ and its owners, managers, contractors, and employees may manufacture, possess, sell, deliver, distribute, dispense, administer, and lawfully dispose of reasonable quantities, as established by department rule, of marijuana ~~low-THC cannabis, medical cannabis,~~ or a cannabis delivery device. For purposes of this subsection, the terms "manufacture," "possession," "deliver," "distribute," and "dispense" have the same meanings as provided in s. 893.02.

(c) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an approved independent testing laboratory may possess, test, transport, and lawfully dispose of marijuana ~~low-THC cannabis or medical cannabis~~ as provided by department rule.

(d) An MMTC ~~approved dispensing organization~~ and its owners, managers, contractors, and employees are not subject to licensure or regulation under chapter 465 or chapter 499 for manufacturing, possessing, selling, delivering, distributing, dispensing, or lawfully disposing of reasonable quantities, as established by department rule, of marijuana ~~low-THC cannabis, medical cannabis,~~ or a cannabis delivery device.

(e) Exercise by an MMTC of ~~An approved dispensing organization that continues to meet the requirements for approval is presumed to be registered with the department and to meet the regulations adopted by the department or its successor agency for the purpose of dispensing medical cannabis or low-THC cannabis under Florida law. Additionally,~~ the authority provided to MMTCs ~~a dispensing organization~~ in s. 499.0295 does not

impair its registration with the department ~~the approval of a dispensing organization~~.

(f) This subsection does not exempt a person from prosecution for a criminal offense related to impairment or intoxication resulting from the medical use of marijuana ~~low-THC cannabis or medical cannabis~~ or relieve a person from any requirement under law to submit to a breath, blood, urine, or other test to detect the presence of a controlled substance.

(g) This section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or substance abuse policy. Notwithstanding any other provision of law, this section does not require an employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana. Notwithstanding any other provision of law, this section does not create a cause of action against an employer for wrongful discharge or discrimination.

(h) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, a research institute established by a public postsecondary educational institution, such as the H. Lee Moffitt Cancer Center and Research Institute established under s. 1004.43, or a state university that has achieved the preeminent state research university designation pursuant to s. 1001.7065 may possess, test, transport, and lawfully dispose of marijuana for research purposes as provided by department rule.

(13) RULEMAKING.—

(a) The department and the applicable boards shall adopt emergency rules pursuant to s. 120.54(4) and this subsection

necessary to implement this section. If an emergency rule adopted under this subsection is held to be unconstitutional or an invalid exercise of delegated legislative authority and becomes void, the department and the applicable boards may adopt an emergency rule to replace the rule that has become void. If the emergency rule adopted to replace the void emergency rule is also held to be unconstitutional or an invalid exercise of delegated legislative authority and becomes void, the department and the applicable boards must follow the nonemergency rulemaking procedures of the Administrative Procedures Act to replace the rule that has become void.

(b) For emergency rules adopted under this subsection, the department and the applicable boards need not make the findings required by s. 120.54(4)(a). Emergency rules adopted under this subsection are exempt from ss. 120.54(3)(b) and 120.541. The department and the applicable boards shall meet the procedural requirements in s. 120.54(2)(a) if the department or the applicable boards have, before the effective date of this act, held any public workshops or hearings on the subject matter of emergency rules adopted under this subsection. Challenges to emergency rules adopted under this subsection are subject to the time schedules provided in s. 120.56(5).

(c) Emergency rules adopted under this section are exempt from s. 120.54(4)(c) and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedures Act. By January 1, 2018, the department and the applicable boards shall initiate nonemergency rulemaking pursuant to the Administrative Procedures Act by publishing a notice of rule development in the Florida

Administrative Register. Except as provided in paragraph (a), after January 1, 2018, the department and applicable boards may not adopt rules pursuant to the emergency rulemaking procedures provided in this subsection.

Section 2. Section 1004.4351, Florida Statutes, is created to read:

1004.4351 Medical marijuana research and education.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Medical Marijuana Research and Education Act."

(2) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) The present state of knowledge concerning the use of marijuana to alleviate pain and treat illnesses is limited because permission to perform clinical studies on marijuana is difficult to obtain, with access to research-grade marijuana so restricted that little or no unbiased studies have been performed.

(b) Under the State Constitution, marijuana is available for the treatment of certain debilitating medical conditions.

(c) Additional clinical studies are needed to ensure that the residents of this state obtain the correct dosing, formulation, route, modality, frequency, quantity, and quality of marijuana for specific illnesses.

(d) An effective medical marijuana research and education program would mobilize the scientific, educational, and medical resources that presently exist in this state to determine the appropriate and best use of marijuana to treat illness.

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

(a) "Board" means the Medical Marijuana Research and Education Board.

(b) "Coalition" means the Coalition for Medical Marijuana Research and Education.

(c) "Marijuana"" has the same meaning as provided in s. 29, Art. X of the State Constitution.

(4) COALITION FOR MEDICAL MARIJUANA RESEARCH AND EDUCATION.—

(a) There is established within the H. Lee Moffitt Cancer Center and Research Institute, Inc., the Coalition for Medical Marijuana Research and Education. The purpose of the coalition is to conduct rigorous scientific research, provide education, disseminate research, and guide policy for the adoption of a statewide policy on ordering and dosing practices for the medicinal use of marijuana. The coalition shall be physically located at the H. Lee Moffitt Cancer Center and Research Institute, Inc.

(b) The Medical Marijuana Research and Education Board is established to direct the operations of the coalition. The board shall be composed of seven members appointed by the chief executive officer of the H. Lee Moffitt Cancer Center and Research Institute, Inc. Board members must have experience in a variety of scientific and medical fields, including, but not limited to, oncology, neurology, psychology, pediatrics, nutrition, and addiction. Members shall be appointed to 4-year terms and may be reappointed to serve additional terms. The chair shall be elected by the board from among its members to serve a 2-year term. The board shall meet no less than semiannually, at the call of the chair or, in his or her absence or incapacity, the vice chair. Four members constitute a quorum. A majority vote of the members present is required for all

actions of the board. The board may prescribe, amend, and repeal a charter governing the manner in which it conducts its business. A board member shall serve without compensation but is entitled to be reimbursed for travel expenses by the coalition or the organization he or she represents in accordance with s. 112.061.

(c) The coalition shall be administered by a coalition director, who shall be appointed by and serve at the pleasure of the board. The coalition director shall, subject to the approval of the board:

1. Propose a budget for the coalition.

2. Foster the collaboration of scientists, researchers, and other appropriate personnel in accordance with the coalition's charter.

3. Identify and prioritize the research to be conducted by the coalition.

4. Prepare the Medical Marijuana Research and Education Plan for submission to the board.

5. Apply for grants to obtain funding for research conducted by the coalition.

6. Perform other duties as determined by the board.

(d) The board shall advise the Board of Governors, the State Surgeon General, the Governor, and the Legislature with respect to medical marijuana research and education in this state. The board shall explore methods of implementing and enforcing medical marijuana laws in relation to cancer control, research, treatment, and education.

(e) The board shall annually adopt a plan for medical marijuana research, known as the "Medical Marijuana Research and

Education Plan," which must be in accordance with state law and coordinate with existing programs in this state. The plan must include recommendations for the coordination and integration of medical, nursing, paramedical, community, and other resources connected with the treatment of debilitating medical conditions, research related to the treatment of such medical conditions, and education.

(f) By February 15 of each year, the board shall issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on research projects, community outreach initiatives, and future plans for the coalition.

(5) RESPONSIBILITIES OF THE H. LEE MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, INC.—The H. Lee Moffitt Cancer Center and Research Institute, Inc., shall allocate staff and provide information and assistance, as the coalition's budget permits, to assist the board in fulfilling its responsibilities.

Section 3. Paragraph (b) of subsection (3) of section 381.987, Florida Statutes, is amended to read:

381.987 Public records exemption for personal identifying information in the compassionate use registry.—

(3) The department shall allow access to the registry, including access to confidential and exempt information, to:

(b) A medical marijuana treatment center registered with ~~dispensing organization approved by~~ the department pursuant to s. 381.986 which is attempting to verify the authenticity of a physician certification ~~physician's order~~ for marijuana ~~low-THC cannabis~~, including whether the physician certification ~~order~~ had been previously filled and whether the physician

certification ~~order~~ was written for the person attempting to have it filled.

Section 4. Subsection (1) of section 385.211, Florida Statutes, is amended to read:

385.211 Refractory and intractable epilepsy treatment and research at recognized medical centers.—

(1) As used in this section, the term "low-THC cannabis" means "low-THC cannabis" as defined in s. 381.986 which ~~that~~ is dispensed only from a medical marijuana treatment center ~~dispensing organization~~ as defined in s. 381.986.

Section 5. Present paragraphs (b) and (c) of subsection (2) of section 499.0295, Florida Statutes, are redesignated as paragraphs (a) and (b), respectively, present paragraphs (a) and (c) of that subsection are amended, a new paragraph (c) is added to that subsection, and subsection (3) of that section is amended, to read:

499.0295 Experimental treatments for terminal conditions.—

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

~~(a) "Dispensing organization" means an organization approved by the Department of Health under s. 381.986(5) to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices.~~

(b) ~~(c)~~ "Investigational drug, biological product, or device" means:

1. A drug, biological product, or device that has successfully completed phase 1 of a clinical trial but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug

Administration; or

2. Marijuana ~~Medical cannabis~~ that is manufactured and sold by an MMTC ~~a dispensing organization~~.

(c) "Medical marijuana treatment center" or "MMTC" means an organization registered with the Department of Health under s. 381.986.

(3) Upon the request of an eligible patient, a manufacturer may, or upon the issuance of a physician certification ~~a physician's order~~ pursuant to s. 381.986, an MMTC ~~a dispensing organization~~ may:

(a) Make its investigational drug, biological product, or device available under this section.

(b) Provide an investigational drug, biological product, device, or cannabis delivery device as defined in s. 381.986 to an eligible patient without receiving compensation.

(c) Require an eligible patient to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product, device, or cannabis delivery device as defined in s. 381.986.

Section 6. Subsection (1) of section 1004.441, Florida Statutes, is amended to read:

1004.441 Refractory and intractable epilepsy treatment and research.—

(1) As used in this section, the term "low-THC cannabis" means "low-THC cannabis" as defined in s. 381.986 which ~~that~~ is dispensed only from a medical marijuana treatment center ~~dispensing organization~~ as defined in s. 381.986.

Section 7. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act"

wherever it occurs in this act with the date the act becomes a law.

Section 8. This act shall take effect upon becoming a law.

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 406
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Bradley and others
SUBJECT:	Compassionate Use of Low-THC Cannabis and Marijuana
DATE:	April 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Fournier/Loe	Williams	AHS	**Recommend: Fav/CS**
3.	Fournier/Loe	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 406 amends section 381.986, Florida Statutes, to implement the provisions of Article X, section 29 of the State Constitution, Medical Marijuana Production, Possession, and Use. The bill makes numerous changes to the section including:

- Adding legislative intent.
- Amending definitions to incorporate terms used in Article X, section 29 of the State Constitution, and to add definitions for "chronic nonmalignant pain" and "close relative."
- Allowing allopathic[1] and osteopathic[2] physicians to certify the medical use of marijuana for patients with debilitating medical conditions and other specified patients, including certain patients from other states who meet Florida requirements.
- Establishing requirements that a physician must meet before certifying a patient and after certification.
- Reducing the required course a physician must take prior to certifying patients to a 4-hour course that must be taken each time such physician renews his or her license.[3]
- Removing the three-month patient treatment prerequisite.
- Amending current criminal penalties to conform to other changes in the bill and establishing new criminal violations for patients and caregivers cultivating or purchasing marijuana from

[1] Licensed under ch. 458, F.S.
[2] Licensed under ch. 459, F.S.
[3] Section 381.986(4)(a), F.S., requires that physicians take an 8-hour course biannually.

a source other than a medical marijuana treatment center (MMTC) or who violate other provisions of the act.
- Prohibiting unlicensed activity and providing for criminal and financial penalties.
- Establishing requirements for caregivers including limiting a patient to one caregiver and a caregiver to one patient with certain exceptions, and requiring that caregivers pass a Level 2 background screening with certain exceptions for a caregiver who is a close relative.
- Provides that a nursing home or assisted living facility may not prevent a qualifying patient residing in the nursing home or assisted living facility from hiring a caregiver, but a nursing home or assisted living facility may prohibit its employees from acting as caregivers to residents of the nursing home or assisted living facility, and a nursing home or assisted living facility is not required to provide a caregiver to a resident who is a qualifying patient.
- Requiring the Department of Health (DOH) to begin issuing identification cards to patients and caregivers by October 3, 2017.
- Requiring the DOH to implement training and educational programs to enable minority persons and minority or veteran businesses to compete for MMTC registration and contracts.
- Requiring the DOH to establish requirements for the licensure and certification of independent testing laboratories (ITL), a marijuana quality control program, and a seed-to-sale tracking program for marijuana.
- Grandfathering in existing dispensing organizations as MMTCs,[4] adding five MMTCs by October 3, 2017, and increasing the overall number of MMTCs that may be registered when certain numbers of patients are registered on the compassionate use registry.
- Requiring MMTCs to demonstrate the ability to implement a diversity plan and maintain compliance with the representations made in their applications for registration, and allowing the DOH to grant variances in certain circumstances.
- Limiting each MMTC to no more than three dispensing facilities.
- Authorizing emergency rulemaking for implementation and timeframes for initiating nonemergency rulemaking.

The bill creates section 1004.4351, Florida Statutes, to establish the "Medical Marijuana Research and Education Act" and the Coalition for Medical Marijuana Research and Education within the H. Lee Moffitt Cancer Center and Research Institute, Inc.

The bill also makes other conforming and technical changes to sections 381.986, 381.987, 385.211, 499.0295, and 1004.411, Florida Statutes.

The fiscal impact of the bill is indeterminate. On April 7, 2017, the Revenue Estimating Conference estimated the bill has an indeterminate positive fiscal impact on state revenues.[5] The increased costs incurred by the DOH and the Florida Department of Law Enforcement (FDLE) should be offset by fees and fines authorized in the bill.

The bill is effective upon becoming a law.

[4] Including dispensing organizations that are currently in litigation but would qualify under ch. 2016-1236, L.O.F.
[5] Office of Economic and Demographic Research, *Revenue Estimating Impact Conference results for CS/SB 406, (April 7, 2017)* available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0407.pdf, pages 527-531 (last visited April 16, 2017).

II. Present Situation:

Treatment of Marijuana in Florida

Florida law defines cannabis as "all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin,"[6] and places it, along with other sources of tetrahydrocannabinol (THC), on the list of Schedule I controlled substances.[7] The definition excludes "low-THC cannabis" as defined in s. 381.986, F.S., if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with that section.

Schedule I controlled substances are substances that have a high potential for abuse and no currently accepted medical use in the United States.[8] As a Schedule I controlled substance, possession and trafficking of cannabis carry criminal penalties that vary from a first-degree misdemeanor[9] up to a first-degree felony with a mandatory minimum sentence of 15 years in state prison and a $200,000 fine.[10] Paraphernalia[11] that is sold, manufactured, used, or possessed with the intent to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, is also prohibited and carries criminal penalties ranging from a first degree misdemeanor to a third degree felony.[12]

Medical Marijuana in Florida: the Compassionate Medical Cannabis Act of 2014

Patient Treatment with Low-THC Cannabis

The Compassionate Medical Cannabis Act of 2014[13] (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)[14] for medical use[15] by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms. The act provides that a Florida

[6] Section 893.02(3), F.S.
[7] Section 893.03(1)(c)7. and 37., F.S.
[8] Section 893.03(1), F.S.
[9] This penalty is applicable to possession or delivery of less than 20 grams of cannabis. *See* s. 893.13(3) and (6)(b), F.S.
[10] Trafficking in more than 25 pounds, or 300 plants, of cannabis is a first-degree felony with a mandatory minimum sentence that varies from three to 15 years in state prison depending on the quantity of the cannabis possessed, sold, etc. *See* s. 893.135(1)(a), F.S.
[11] Section 893.145, F.S.
[12] Section 893.147, F.S.
[13] Chapter 2014-157, Laws of Fla., codified in s. 381.986, F.S.
[14] Section 381.986(b), F.S., defines "low-THC cannabis," as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.
[15] Section 381.986(1)(c), F.S., defines "medical use" as administration of the ordered amount of low-THC cannabis; and the term does not include the possession, use, or administration by smoking, or the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative. Section 381.986(1)(e), F.S., defines "smoking" as burning or igniting a substance and inhaling the smoke; smoking does not include the use of a vaporizer.

licensed allopathic or osteopathic physician who has completed the required training[16] and has examined and is treating such a patient may order low-THC cannabis for that patient to treat such disease, disorder, or condition or to alleviate its symptoms, if no other satisfactory alternative treatment options exist for that patient. In order for a physician to order low-THC cannabis for a patient, all of the following conditions must apply:

- The patient is a permanent resident of Florida;
- The physician has treated the patient for at least 3 months immediately preceding the patient's registration and has determined that the risks of ordering low-THC cannabis are reasonable in light of the potential benefit for that patient;[17]
- The physician registers as the orderer of low-THC cannabis for the patient on the compassionate use registry (registry) maintained by the DOH and updates the registry to reflect the contents of the order;
- The physician maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the low-THC cannabis;
- The physician submits the patient treatment plan quarterly to the University of Florida, College of Pharmacy (UFCP) for research on the safety and efficacy of low-THC cannabis on patients; and
- The physician obtains the voluntary informed consent of the patient or the patient's legal guardian to treatment with low-THC cannabis after sufficiently explaining the current state of knowledge in the medical community about the effectiveness of treatment of the patient's condition with low-THC cannabis, the medically acceptable alternatives, and the potential risks and side effects.[18]

The act creates exceptions to existing law to allow qualified patients[19] and their legal representatives to purchase, acquire, and possess low-THC cannabis – up to the amount ordered – for that patient's medical use; and to allow dispensing organizations (DO) and their owners, managers, and employees to acquire, possess, cultivate, and dispose of excess product in reasonable quantities to produce low-THC cannabis and to possess, process, and dispense low-THC cannabis. The DOs and their owners, managers, and employees are not subject to licensure and regulation under ch. 465, F.S., relating to pharmacies.[20]

Patient Treatment with Medical Cannabis

Chapter 2016-123, Laws of Florida, amended the act to expand the regulatory structure relating to dispensing low-THC cannabis and authorized approved dispensing organizations to cultivate and dispense medical cannabis to eligible patients as defined under the Right to Try Act

[16] Section 381.986(4), F.S., requires such physicians to successfully complete an 8-hour course and examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association that encompasses the clinical indications for the appropriate use of low-THC cannabis, appropriate delivery mechanisms, contraindications for such use, and the state and federal laws governing its ordering, dispensing, and processing.
[17] If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record.
[18] Section 381.986(2), F.S.
[19] Section 381.986(1)(d), F.S., defines a "qualified patient" as a Florida resident who has been added by a physician licensed under ch. 458 or 459, F.S., to the compassionate use registry to receive low-THC cannabis from a DO.
[20] Section 381.986(7), F.S.

(RTTA).[21] In conjunction with s. 381.986, F.S., the RTTA allows physicians to treat eligible patients with terminal conditions with medical cannabis by including medical cannabis[22] within the definition of an investigational drug, biological product, or device. Physicians must order the use of medical cannabis for those patients pursuant to the provisions of s. 381.986, F.S.

Dispensing Organizations under the Act

Section 381.986, F.S., requires that the DOH approve five DOs, one in each of five regions throughout the state. In order to be approved as a DO, an applicant must possess a certificate of registration issued by the Department of Agriculture and Consumer Services (DACS) for the cultivation of more than 400,000 plants, be operated by a nurseryman, and have been operating as a registered nursery in this state for at least 30 continuous years. DOs must be vertically integrated, meaning the DO performs all stages in the production, processing, marketing, and retailing of low-THC and medical cannabis. Applicants are required to demonstrate:

- The technical and technological ability to cultivate and produce low-THC cannabis;
- The ability to secure the premises, resources, and personnel necessary to operate as a DO;
- The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances;
- An infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the DOH;
- The financial ability to maintain operations for the duration of the two year approval cycle, including the provision of certified financials to the DOH;
- That all owners and managers have been fingerprinted and have successfully passed a Level 2 background screening pursuant to s. 435.04, F.S; and
- The employment of a medical director, who must be a physician[23] and successfully completed a course and examination that encompasses appropriate safety procedures and knowledge of low-THC cannabis.[24]

An approved DO must post a $5 million performance bond within 10 business days of approval. The DOH is authorized to charge an initial application fee and a licensure renewal fee, but is not authorized to charge an initial licensure fee.[25] An approved DO must maintain all approval criteria at all times.[26]

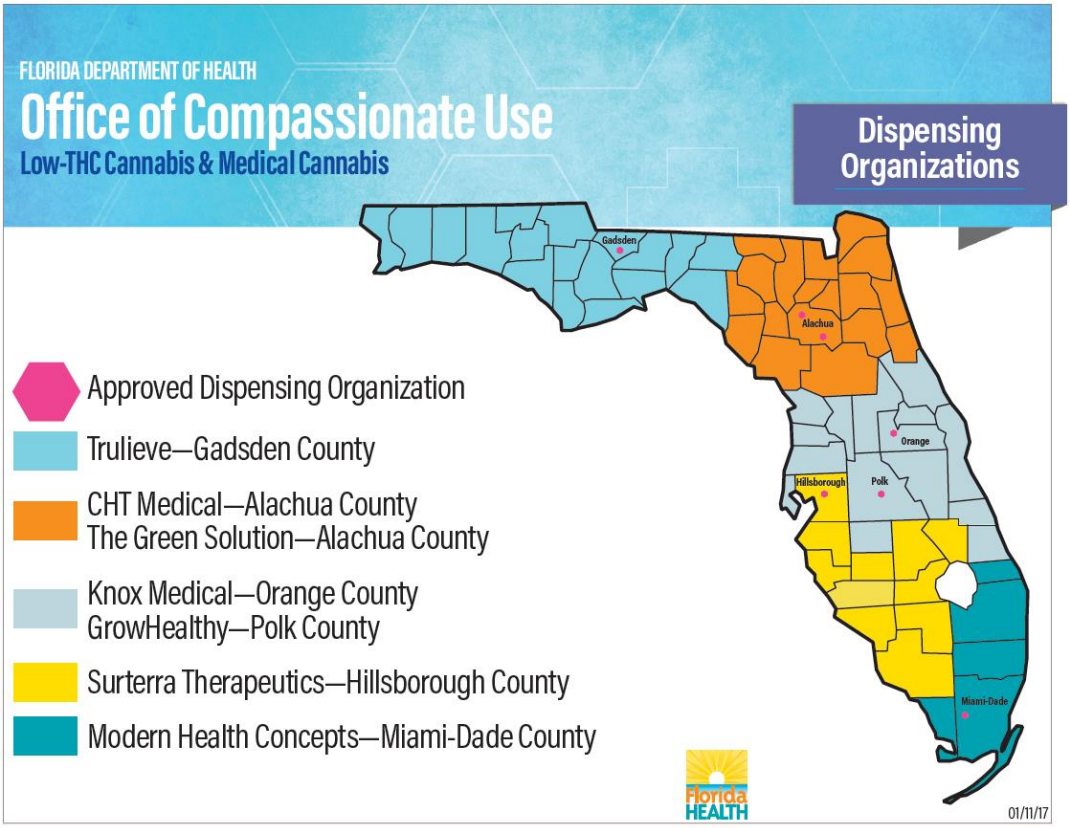
Beginning on July 7, 2014, the DOH held several rule workshops[27] to write and adopt rules implementing the provisions of s. 381.986, F.S., and the DOH put forward a proposed rule on September 9, 2014.[28] This proposed rule was challenged by multiple organizations involved in

[21] Section 499.0295, F.S.
[22] "Medical cannabis" means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a DO for medical use by an eligible patient as defined in the Right to Try Act.
[23] Licensed under ch. 458 or 459, F.S.
[24] *Id.*
[25] *Id.*
[26] Section 381.986(6), F.S.
[27] Audio recordings of the rule development workshops are available on the DOH website at: http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/resources/rulemaking/index.html (last visited Mar. 20, 2017).
[28] Proposed Rule ch. 64-4, F.A.C., ID 14941024, (Aug. 14, 2014) and changed, ID 15040352, (Sept. 9, 2014).

the rulemaking workshops and was found to be an invalid exercise of delegated legislative authority by an administrative law judge on November 14, 2014.[29] Afterward, the DOH held a negotiated rulemaking workshop in February of 2015, which resulted in a new proposed rule being published on February 6, 2015.[30] The new proposed rule was also challenged on, among other things, the DOH's statement of estimated regulatory costs and the DOH's conclusion that the rule will not require legislative ratification. Hearings were held on April 23 and 24, 2015, and a final order was issued on May 27, 2015, which found the rule to be valid.[31] The rule took effect June 17, 2015, and the DOH held an application period for DO approval, which ended on July 8, 2015. Twenty-eight applications were submitted.[32]

On November 23, 2015, the DOH approved a DO in each of the following five regions as required by the act: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida.[33] Numerous petitions were filed challenging the DOH's selection process. In order to allow the approved DOs to begin dispensing products, the 2016 Legislature required the DOH to approve as a DO applicants that received the highest aggregate score through the DOH's evaluation process, notwithstanding any prior determination by the DOH that the applicant failed to meet the requirements of s. 381.986, F.S. The Legislature also provided that if the Division of Administrative Hearings, the DOH, or a court of competent jurisdiction makes a final determination that an applicant was entitled to be a DO, that both this DO and currently approved DOs may operate in the same region.[34] Currently, in addition to the five DOs originally approved, the DOH has since approved The Green Solution in Alachua County and Grow Health in Polk County. The following map depicts the currently approved DOs.

[29] Tornello Landscape Corp. v. DOH, Case No. 14-4547RP; Fl. Medical Cannabis Assoc. v. DOH, Case No. 14-4517RP; Plants of Ruskin, Inc. v. DOH, Case No. 14-4299RP; Costa Farms, LLC v. DOH, Case No. 14-4296RP (Fla. DOAH 2014). A copy of each Final Order is available on the Division of Administrative Hearings website.
[30] Proposed Rule ch. 64-4, F.A.C., ID 15645147, (Feb. 2, 2015).
[31] Baywood Nurseries Co., Inc. v. DOH, Case No. 15-1694RP (Fla. DOAH 2015).
[32] Information about the applications and the approved DOs is available on the DOH, Office of Compassionate Use, website, available at: http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/dispensing-organizations/dispensing-application-process/index.html (last visited Mar. 20, 2017).
[33] Section 381.986(5)(b), F.S. A map of the dispensing regions and approved dispensing organizations is available on the DOH website at: http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/_documents/ocu-dispensing-map.pdf (last visited Mar. 20, 2017).
[34] Chapter 2016-123, Laws of Fla.



In addition to the currently approved DOs, s. 381.986(5)(c), F.S., requires the DOH to approve three additional DOs upon the registration of 250,000 active qualified patients in the compassionate use registry. At least one of the newly approved DOs must be an applicant that is a recognized class member of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999), or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association. These additional applicants are not required to meet the requirement to possess a certificate of registration issued by the DACS for the cultivation of more than 400,000 plants, be operated by a nurseryman, and have been operating as a registered nursery in Florida for at least 30 continuous years.

The Compassionate Use Registry

The act requires the DOH to create a secure, electronic, and online registry for the registration of physicians and patients and for the verification of patient orders by DOs, which is accessible to law enforcement.[35] The registry must allow DOs to record the dispensing of low-THC cannabis, and must prevent an active registration of a patient by multiple physicians. Physicians must register qualified patients with the registry and DOs are required to verify that the patient has an active registration in the registry, that the order presented matches the order contents as recorded in the registry, and that the order has not already been filled before dispensing any low-THC cannabis. The DOs are also required to record in the registry the date, time, quantity, and form of low-THC cannabis dispensed.[36] The Compassionate Use Registry became operational on

[35] Section 381.986(5)(a), F.S.
[36] Section 381.986(6), F.S.

July 11, 2016.[37] As of the end of February 2017, there were 4,079 patients registered with the Compassionate Use Registry.[38]

The Office of Compassionate Use and Research on Low-THC Cannabis

The DOH was required to establish the Office of Compassionate Use under the direction of the deputy state health officer to administer the act.[39, 40]

The act includes several provisions related to research on low-THC cannabis and cannabidiol including:

- Requiring physicians to submit quarterly patient treatment plans to the UFCP for research on the safety and efficacy of low-THC cannabis;[41]
- Authorizing state universities to perform research on cannabidiol and low-THC cannabis and exempting them from the provisions in ch. 893, F.S., for the purposes of such research;[42] and
- Appropriating $1 million to the James and Esther King Biomedical Research Program for research on cannabidiol and its effects on intractable childhood epilepsy.[43]

Medical Marijuana in Florida: Amendment 2 (2016)

On November 4, 2016, Amendment 2 was voted into law and established Article X, section 29 of the State Constitution. This section of the constitution became effective on January 3, 2017, and creates several exemptions from criminal and civil liability for:

- Qualifying patients medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical Marijuana Treatment Centers (MMTCs), their agents, and employees for actions or conduct under the amendment and in compliance with DOH rules.

The constitution defines multiple terms including:

- "Qualifying patient" to mean a person who:
  - Has been diagnosed with a "debilitating medical condition;"

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[37] Office of Compassionate Use, *Implementation Timeline* (October 2016) *available at* http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/_documents/ocu-timeline.pdf, (last visited Mar. 21, 2017).

[38] Revenue Estimating Conference, *Use of Marijuana for Debilitating Medical Conditions* (March 2, 2017), p. 3, (on file with the Senate Committee on Health Policy).

[39] Section 385.212, F.S.

[40] The Office of Compassionate Use is authorized to enhance access to investigational new drugs for Florida patients through approved clinical treatment plans or studies by: creating a network of state universities and medical centers recognized for demonstrating excellence in patient-centered coordinated care for persons undergoing cancer treatment and therapy in this state; making any necessary application to the U.S. Food and Drug Administration (FDA) or a pharmaceutical manufacturer to facilitate enhanced access to compassionate use for Florida patients; and entering into agreements necessary to facilitate enhanced access to compassionate use for Florida patients. *See* ss. 381.925 and 385.212, F.S.

[41] Section 381.986(2)(e), F.S.

[42] Section 385.211, F.S.

[43] Chapter 2014-157, Laws of Fla. The DOH and the University of Florida executed a contract (ID 5EP01) on June 5, 2015, and $483,334 of the $1 million grant award has been spent. Florida Accountability Contract Tracking System (FACTS). *Available at:* https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=640000&ContractId=5EP01. (last visited April 16, 2017).

  - Has a "physician certification;" and
  - Has a valid qualifying patient identification card issued by the DOH.
  - In the case of a minor patient, must also have the consent of a parent or legal guardian prior to both obtaining a physician certification and obtaining an identification card from the DOH.[44]
- "Debilitating Medical Condition" to mean:
  - Cancer;
  - Epilepsy;
  - Glaucoma;
  - HIV/AIDS;
  - Post-Traumatic Stress Disorder (PTSD);
  - Amyotrophic lateral sclerosis (ALS);
  - Crohn's Disease;
  - Parkinson's Disease;
  - Multiple Sclerosis; or
  - Another debilitating medical condition of the same kind or class as, or comparable to, the enumerated conditions.
  - Additionally, a physician must believe that the medical use of marijuana would likely outweigh the potential health risks for the patient.
- "Marijuana" to have the meaning given to cannabis in section 893.02(3), F.S. (2014), and, in addition, "low-THC cannabis" as defined in section 381.986(1)(b), F.S. (2014), shall also be included in the meaning of the term "marijuana."
- "Medical Marijuana Treatment Center" or "MMTC" to mean an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the DOH.
- "Medical use" to mean the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with DOH rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver's designated qualifying patient for the treatment of a debilitating medical condition.
- "Physician Certification" to mean a written document signed by a person who is "licensed to practice medicine" in Florida stating:
  - The physician has conducted a medical examination of the patient and a full assessment of the patient's medical history;
  - That, in the physician's professional opinion, the patient has a debilitating medical condition;
  - That, in the physician's professional opinion, the medical use of marijuana will outweigh the health risks for the patient; and
  - For how long the physician recommends the medical use of marijuana for the patient.

Once certified, a patient may designate one or more caregivers to assist him or her with the medical use of marijuana. The amendment defines a "caregiver" as a person who is at least 21 years of age who has agreed to assist with a qualifying patient's medical use of marijuana and has qualified for and obtained a caregiver identification card issued by the DOH. Caregivers:

[44] This provision is included in the definition of "physician certification."

- Are prohibited from consuming medical marijuana;
- Must obtain an ID card from the DOH;
- Are subject to standards and qualifications established by the DOH including:
  - Background checks;
  - Procedures for issuing ID cards; and
  - Limitations on the number of caregivers per patient and the number of patients per caregiver.

The DOH is required to register MMTCs that will be authorized to acquire, cultivate, possess, process, transfer, transport, sell, distribute, dispense, or administer medical marijuana, related supplies, or educational materials to patients and caregivers. The DOH is required to adopt rules regarding MMTCs including:

- Procedures to register as an MMTC;
- Procedures for the issuance, renewal, suspension, and revocation of MMTC registrations; and
- Standards to ensure proper security, record keeping, testing, labeling, inspection, and safety.

The amendment requires the DOH to adopt rules no later than July 3, 2017, six months after its effective date. The stated purpose of the rules is to ensure the availability and safe use of medical marijuana by qualifying patients. Currently, the DOH has begun the rulemaking process to implement Article X, section 29 of the State Constitution and has held several workshops around Florida.[45] The DOH is required to adopt rules for:

- Issuing patient and caregiver ID cards;[46]
- Procedures for establishing caregiver qualifications;
- Procedures for registering MMTCs; and
- A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply, based on the best available medical evidence. This presumption can be overcome on an individual patient basis.

If the DOH does not adopt rules by the deadline, the amendment creates a cause of action for any Florida citizen to seek judicial relief to compel the DOH's compliance.

Additionally, the DOH is required to begin registering MMTCs and issuing patient and caregiver ID cards by October 3, 2017, nine months after the amendment's effective date. If the DOH does not comply with this requirement, the amendment states that a physician certification is sufficient for a person to become a qualifying patient without being issued an ID card from the DOH.

The amendment also creates a number of specific restrictions on its exemption from liability, and its grants of authority, including specifically:

- Not repealing or allowing violations of other laws related to the non-medical use of marijuana;

[45] Rule 64-4.012, F.A.C., rule notice published on Jan. 17, 2017, *available at* https://www.flrules.org/gateway/ruleNo.asp?id=64-4.012, (last visited on Mar. 20, 2017).

[46] On Feb. 18, 2017, the DOH adopted Rule 64-4.011, F.A.C., addressing the issuance of Compassionate Use Registry Identification Cards. This rule may bring the DOH into compliance with the requirement to adopt rules for issuing ID cards by July 3, 2017; however, the rule may need requiring amending to comply with constitutional terms and to comply with changes to s. 381.986, F.S., provided in this bill.

- Not permitting the operation of any vehicle under the influence of marijuana;
- Not requiring the accommodation of the use of marijuana in specific areas or in any public place;
- Not requiring any health insurance provider to cover the medical use of marijuana; and
- Not affecting laws related to negligence or malpractice on the part of any patient, caregiver, physician, or MMTC agent or employee.

The State Constitution authorizes the Legislature to enact laws consistent with the constitution's language, and provides for severability so that if any clause, sentence, paragraph or section of the amendment, or an application thereof, is found to be invalid by a court of competent jurisdiction, other provisions shall continue to be in effect to the fullest extent possible.

The Revenue Estimating Conference has estimated that under Amendment 2 and the proposed DOH rules, sales tax revenue from medical marijuana sales will be $2.6 million in Fiscal Year 2017-2018 and will increase to $24.3 million in Fiscal Year 2021-2022.

Medical Marijuana in Florida: The Necessity Defense

Despite the fact that the use, possession, and sale of marijuana are prohibited by state law, Florida courts have found that circumstances can necessitate medical use of marijuana and circumvent the application of criminal penalties. The necessity defense was successfully applied in a marijuana possession case in *Jenks v. State* where the First District Court of Appeal found that s. 893.03, F.S., does not preclude the defense of medical necessity for the use of marijuana if the defendant:

- Did not intentionally bring about the circumstance which precipitated the unlawful act;
- Could not accomplish the same objective using a less offensive alternative available; and
- The evil sought to be avoided was more heinous than the unlawful act.[47]

In the cited case, the defendants, a married couple, were suffering from uncontrollable nausea due to AIDS treatment and had testimony from their physician that he could find no effective alternative treatment. Under these facts, the court found that the defendants met the criteria to qualify for the necessity defense and ordered an acquittal of the charges of cultivating cannabis and possession of drug paraphernalia.

Medical Marijuana Laws in Other States

Currently, 28 states, the District of Columbia, and Guam have some form of law that permits the use of marijuana for medicinal purposes.[48] These laws vary widely in detail but most share

[47] *Jenks v. State*, 582 So.2d 676, 679 (Fla. 1st DCA 1991), *review denied*, 589 So.2d 292 (Fla. 1991).

[48] These states include: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. California was the first to establish a medical marijuana program in 1996 and New York was the most recent state to pass medical marijuana legislation in June 2014. Seventeen states allow limited access to marijuana products (low-THC and/or high CBD-cannabidiol). Alabama, Florida, Georgia, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming. National Conference of State Legislatures, *State Medical Marijuana Laws*, (Mar. 16, 2017), *available at* http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx (last visited Mar. 20, 2017).

certain features. For example, most state laws require an identification card and registry for patients and caregivers to use medical marijuana; require the patient to receive certification from up to two physicians that the patient has a qualifying condition before the patient may use medical marijuana; allow a patient to designate a caregiver who can possess the medical marijuana and assist the patient in using the medical marijuana; and provide general restrictions on how medical marijuana can be obtained (self-cultivated or from a dispensary) and where it can be used.[49]

Of the 17 states with low-THC cannabis laws similar to s. 381.986, F.S., most specify that the use of such low-THC cannabis is reserved for patients with epileptic or seizure disorders. Florida allows the treatment of cancer and Georgia allows the treatment of end stage cancer and other specified conditions. Additionally, the definition of low-THC cannabis differs from state to state. The THC level allowed ranges from a high of below five percent to less than 0.3 percent; most states restrict the level of THC to below one percent. CBD levels are generally required to be high, with most states requiring at least 10 percent.[50]

Interaction with the Federal Government

The federal Controlled Substances Act lists marijuana as a Schedule 1 drug and provides no exceptions for medical uses.[51] Possession, manufacture, and distribution of marijuana is a crime under federal law.[52] Although a state's medical marijuana laws protect patients from prosecution for the legitimate use of marijuana under state law, state medical marijuana laws, or Constitutional provisions, do not protect individuals from prosecution under federal law.

In 2013, the U.S. Department of Justice (USDOJ) issued statements indicating that the federal government would not pursue cases for low-level drug crimes, leaving such prosecutions largely up to state authorities. The U.S. Attorney General issued a statement that the USDOJ was changing policy such that individuals "who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels, will no longer be charged with offenses that impose draconian mandatory minimum sentences… [and] would instead receive sentences better suited to their individual conduct…"[53] Further, the USDOJ issued a memorandum clarifying that the department considers small-scale marijuana use to be a state matter which states may choose to punish, and certain operations adhering to state laws legalizing marijuana in conjunction with robust state regulatory systems would be far less likely to come under federal scrutiny.[54] In addition, a rider in recent appropriations acts and continuing resolutions has prohibited the USDOJ from using appropriated funds to prevent specified states

[49] Analysis by Senate Health Policy committee staff of s*upra* note 49.
[50] *Supra* note 49.
[51] 21 U.S.C. s. 812. Note: On August 11, 2016, the Federal Drug Enforcement Administration refused two petitions to reschedule marijuana under the Controlled Substances Act, see https://www.dea.gov/divisions/hq/2016/hq081116.shtml, (last visited on Mar. 20, 2017).
[52] The punishments vary depending on the amount of marijuana and the intent with which the marijuana is possessed. *See* 21 U.S.C ss. 841-865.
[53] USDOJ, *Smart on Crime: Reforming the Criminal Justice System for the 21st Century*, (Aug. 2013), p. 3, *available at* http://www.justice.gov/ag/smart-on-crime.pdf (last visited on Mar. 20, 2017).
[54] USDOJ Memorandum for all U.S. Attorneys from James M. Cole, Deputy Attorney General, *Guidance Regarding Marijuana Enforcement* (August 29, 2013), *available at* http://www.justice.gov/iso/opa/resources/305201382913275685746 7.pdf (last visited Mar. 20, 2017).

(including Florida) from implementing the states' own medical marijuana laws.[55] It is worth noting that, with the election of President Trump and changes to the leadership of the USDOJ, the guidance issued by the USDOJ may be amended in the future; however, it would require an act of Congress to amend the rider preventing the USDOJ from using funds to prevent specified states from implementing medical marijuana laws.

III. Effect of Proposed Changes:

In addition to technical and conforming changes made by the bill to ss. 381.986, 381.987, 385.211, 499.0295, and 1004.441, the bill substantially amends s. 381.986, F.S.

Legislative Intent

The bill adds the legislative intent:

- To implement Art. X, s. 29 of the State Constitution by creating a unified regulatory structure for the acquisition, cultivation, possession, processing, transfer, transportation, sale, distribution, and dispensing of marijuana, marijuana products, related supplies, and educational materials;
- That all rules adopted by the DOH to implement the section be adopted pursuant to ch. 120, F.S., and that the DOH may use emergency rulemaking procedures to adopt rules if necessary to meet any rulemaking deadlines established in Art. X, s. 29 of the State Constitution; and
- That all registrations for MMTC activities be issued solely in accordance with the requirements of this section and rules adopted under the section.

Definitions

The bill:

- Conforms the definitions for "caregiver," "debilitating medical condition," "marijuana," "medical marijuana treatment center" or "MMTC," to the definitions in Article X section 29 of the State Constitution.
- Uses the constitutional definition for "medical use" but amends the definition to restrict:
  - Smoking;
  - The possession, use, or administration of marijuana not purchased from an MMTC;
  - The transfer of marijuana to anyone other than a qualifying patient or his or her caregiver;
  - The use or administration of any type or amount of marijuana not specified on a qualifying patient's physician certification; and
  - The use or administration of marijuana:
    - On any form of public transportation;
    - In any public place;

[55] *See* Pub. Law No. 114-113, s. 542 (Consolidated Appropriations Act, 2016). A recent court order by the U.S. District Court for the Northern District of California recently held that a similar provision in the previous appropriations act (s. 538, Pub. L. No. 113-235) does not prohibit the USDOJ from enforcing violations of *federal* marijuana laws by individuals or businesses who are complying with state medical marijuana laws. U.S. v. Marin Alliance for Medical Marijuana and Shaw, Order re: Motion to Dissolve Permanent Injunction, No. C 98-00086 CB, (Oct. 19, 2015), available at http://www.scribd.com/doc/286089509/US-vs-Marin-Alliance-for-Medical-Marijuana#scribd (last visited Mar. 20, 2017).

    - In a qualifying patient's place of employment if restricted by his or her employer;
    - In a state correctional institution;
    - On the grounds of a preschool, primary school, or secondary school; or
    - On a school bus or in a vehicle, aircraft, or motorboat.
- Uses the constitutional definition for "qualifying patient," but also includes "eligible patients" as defined in the Right to Try Act, patients suffering from a physical medical condition that produces symptoms of seizures or severe and persistent muscle spasms, and patients suffering from chronic nonmalignant pain.
- Adds definitions for:
    - "Chronic nonmalignant pain" to mean pain that is caused by a debilitating medical condition or that originates from a debilitating medical condition and persists beyond the usual course of that debilitating medical condition; and
    - "Close relative" to mean a spouse, parent, sibling, grandparent, child, or grandchild, whether related by whole or half-blood, by marriage, or by adoption.

Physician Certifications

The bill allows physicians to issue physician certifications to:
- A patient suffering from a debilitating medical condition;
- A patient suffering from a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms;[56]
- A patient suffering from chronic nonmalignant pain, if the physician has diagnosed an underlying debilitating medical condition as the cause of the pain, which allows the patient to receive marijuana for the patient's medical use to alleviate the patient's pain;
- An eligible patient as defined in the Right to Try Act; or
- A patient who is not a Florida resident and who qualifies under one of the above listed conditions and who can lawfully receive marijuana in the state in which he or she resides.

Before certifying a patient the physician must:
- Be licensed under ch. 458 or 459, F.S.;
- Have successfully completed the required 4-hour course and exam administered by the Florida Medical Association or the Florida Osteopathic Medical Association each time the physician renews his or her license;[57]
- Have conducted a full assessment of the patient's medical history;
- Have determined that, in the physician's professional opinion, the patient meets one of the criteria specified above;
- Have determined that the medical use of marijuana would likely outweigh the potential health risks to the patient;
- Have reviewed the compassionate use registry and confirmed that the patient does not have an active physician certification issued by another physician; and
- Have obtained the voluntary written informed consent of the patient or, if the patient is a minor, the patient's parent or legal guardian, after having sufficiently explained the current

[56] Such patient may receive only low-THC cannabis if the patient does not meet any of the other qualifications.
[57] Section 381.986(4)(a), F.S., requires an 8-hour course and exam which must be retaken biannually.

state of knowledge in the medical community of the effectiveness of treatment of the patient's condition with marijuana and the potential risks and side effects.[58]

For patients under the age of 18, a second physician must concur with the treating physician's determination that the medical use of marijuana would likely outweigh the health risks for the patient. Additionally, patients under the age of 18 are restricted from purchasing marijuana and are required to have a parent, legal guardian, caregiver, or health care provider assist them in purchasing and administering marijuana.

The physician must also register as the treating physician with the compassionate use registry. The bill increases the amount of marijuana a physician may certify a patient to receive from a 45-day supply to a 90-day supply and allows a physician to certify a patient for longer than the 90-day period if the physician believes that the patient will use the additional marijuana in a medically appropriate way. Patients must be recertified at least annually. A physician may not issue physician certifications if he or she is a medical director employed by an MMTC.

The bill also grandfathers in all orders for low-THC cannabis issued prior to the effective date of the act as physician certifications, and requires the DOH to consider patients with such orders as qualifying patients until the DOH begins issuing compassionate use registry identification cards.

Prohibited Acts

The bill:

- Conforms existing penalties to the changes made by the bill;
- Creates two new misdemeanors for a qualifying patient or caregiver who cultivates marijuana or who purchases or acquires marijuana from any person or entity other than an MMTC[59] and a caregiver who violates any of the applicable provisions of this section or applicable department rules;[60]
- Specifies that an MMTC may not advertise services that it is not registered to provide; and
- Prohibits any person or entity from offering or advertising services as an MMTC without being registered as an MMTC. The bill establishes penalties for unlicensed activity including fines of up to $10,000 per day, and that the DOH or any state attorney may bring action for an injunction of the activity until compliance has been established to the satisfaction of the DOH. The bill also allows the DOH to assess reasonable investigative and legal costs for a successful prosecution.

Caregivers

The bill allows a qualifying patient to designate a caregiver to assist him or her with the medical use of marijuana. The bill requires the DOH to register a caregiver and issue him or her a compassionate use registry identification card if designated by a qualifying patient, and the caregiver:

- Is 21 years of age or older, unless the patient is a close relative of the caregiver;

[58] If the patient is an eligible patient, the physician must obtain written informed consent pursuant to s. 499.0295, F.S.
[59] A first degree misdemeanor.
[60] A second degree misdemeanor on the first offense and a first degree misdemeanor on subsequent offenses.

- Agrees in writing to be the qualifying patient's caregiver;
- Does not receive compensation, other than actual expenses incurred, for assisting the qualifying patient with the medical use of marijuana unless the caregiver is acting pursuant to employment in a licensed facility in accordance with subparagraph (c)2.; and
- Passes a Level 2 background screening pursuant to ch. 435, F.S., unless the patient is a close relative of the caregiver.

A qualifying patient may have only one designated caregiver at a time unless all of the patient's caregivers are his or her close relatives or legal representatives. A caregiver may assist only one patient at a time unless:

- All qualifying patients the caregiver is assisting are close relatives of each other and the caregiver is the legal representative of at least one of the patients; or
- All qualifying patients the caregiver is assisting are receiving hospice services, or are residents, in the same assisted living facility, nursing home, or other licensed facility and have requested the assistance of that caregiver with the medical use of marijuana; the caregiver is an employee of the hospice or licensed facility; and the caregiver provides personal care or services directly to clients of the hospice or licensed facility as a part of his or her employment duties at the hospice or licensed facility.
- A nursing home or assisted living facility may not prevent a qualifying patient residing in the nursing home or assisted living facility from hiring a caregiver, but a nursing home or assisted living facility may prohibit its employees from acting as caregivers to residents of the nursing home or assisted living facility. A nursing home or assisted living facility is not required to provide a caregiver to a resident who is a qualifying patient.

Duties of the DOH

Compassionate Use Registry

The bill requires the DOH to expand access to the compassionate use registry to:

- Practitioners licensed under ch. 458 or 459, F.S., to ensure proper care for patients requesting physician certifications; and
- Practitioners licensed to prescribe prescription drugs, to ensure proper care for patients before prescribing medications that may interact with the medical use of marijuana;

The bill specifies that law enforcement agencies may check the registry to verify the authorization of a qualifying patient or a patient's caregiver to possess marijuana or a cannabis delivery device.

Compassionate Use Registry Identification Cards

By July 3, 2017, the bill requires the DOH to adopt rules establishing procedures for the issuance, annual renewal, suspension, and revocation of compassionate use registry identification cards for patients and caregivers who are residents of this state. The bill allows the DOH to charge a reasonable fee for issuing and renewal of identification cards. The bill requires that the DOH begin issuing identification cards to patients and caregivers by October 3, 2017. Minor patients must provide the DOH with written consent from a parent or a legal guardian before being issued an identification card. Identification cards may be issued to Florida residents, who must provide proof of permanent residency, or to out-of-state patients who will be in the state for

at least three consecutive months and who are eligible to receive marijuana legally in their state of residency through a medical marijuana program.

The bill specifies that the identification cards must be resistant to counterfeiting and tampering and at a minimum contain:

- The name, address, and date of birth of the patient or caregiver, as appropriate;
- A full-face, passport-type, color photograph of the patient or caregiver, as appropriate, taken within the 90 days immediately preceding registration;
- Designation of the cardholder as a patient or caregiver;
- A unique numeric identifier for the patient or caregiver which is matched to the identifier used for such person in the department's compassionate use registry. A caregiver's identification number and file in the compassionate use registry must be linked to the file of the patient or patients the caregiver is assisting so that the caregiver's status may be verified for each patient individually;
- The expiration date, which shall be one year after issuance or the date treatment ends as provided in the patient's physician certification, whichever occurs first; and
- For caregivers who are assisting three or fewer qualifying patients, the names and unique numeric identifiers of the qualifying patient or patients that the caregiver is assisting.

Dispensing Organization Grandfathering

The bill requires the DOH to grandfather in all existing DOs as MMTCs as soon as practicable.[61] The DOH may not charge the DOs a registration fee and the bill states that, for the purposes of the act, all DOs are deemed to be MMTCs on the effective date of the act. The bill requires that the DOs continue to comply with all representations made in their applications to be dispensing organizations after being registered as MMTCs and allows the DOH to grant variances to those representations.

Additional MMTCs

The bill requires that, by October 3, 2017, the DOH register five additional MMTCs with at least one applicant that is a recognized class member of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) or In re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011) and a member of the Black Farmers and Agriculturalists Association. Additionally, within six months of each instance of the registration of 75,000 patients in the compassionate use registry, the DOH must register four additional MMTCs. The DOH must identify applicants with strong diversity plans, and implement training programs and other educational programs to enable minority persons,[62] minority businesses,[63] and veteran businesses[64] to compete for MMTC registration and contracts. The bill retains the requirement that MMTCs be vertically integrated, but eliminates the requirements that MMTCs possess a valid certificate of registration issued by the DACS pursuant to s. 581.131, F.S., that is issued for the cultivation of more than 400,000 plants, be operated by a nurseryman as defined in s. 581.011, F.S., and have been operated as a registered nursery in this state for at least 30 continuous years. The bill requires that all applicants must be

[61] Including DOs that become MMTCs pursuant to the results of litigation (see present situation for details).
[62] Section 288.703(4), F.S.
[63] Section 288.703(3), F.S.
[64] Section 295.187(3)(c), F.S.

registered to do business in Florida for at least five continuous years prior to applying, and must demonstrate the ability to implement a diversity plan that promotes and ensures the involvement of minority persons and minority business enterprises or veteran business enterprises in ownership, management, employment, and contracting opportunities. The bill also restricts the DOH from issuing more than one MMTC registration to a person or entity.

Independent Testing Laboratories

The bill authorizes the establishment of independent testing laboratories (ITLs) to collect and accept samples of, possess, store, transport, and test marijuana. All MMTCs are required to have their marijuana tested at an ITL to ensure that it meets DOH standards before it is dispensed. All ITLs must be licensed by the DOH except clinical laboratories licensed by the Agency for Health Care Administration (AHCA) which are exempt from this requirement. The DOH is required to adopt rules for ITL licensure requirements and a process for licensing ITLs including an application form, an initial application fee, and a biennial renewal fee.

In addition to licensure, the bill also requires that ITLs be certified by the DOH to perform all required tests. The DOH must issue a certification to an ITL that has been certified by a third-party laboratory certification body approved by the DOH. The DOH must adopt rules for certifying ITLs including rules for personnel qualifications, equipment and methodology, proficiency testing, tracking, sampling, chain of custody, record and sample retention, reporting, audit and inspection, and security.

The bill specifies that an ITL may accept samples only from a sample source approved by the DOH which, at a minimum, must include an MMTC, a researcher affiliated with an accredited university or research hospital, a qualifying patient, or a caregiver.

Quality Control Program

The bill requires the DOH to establish a marijuana quality control program that must require MMTCs to submit samples from each batch or lot of marijuana harvested or manufactured to an ITL to ensure that, at a minimum, labeling of the potency of THC and other marketed cannabinoids or terpenes is accurate and that it is safe for human consumption. The MMTC is required to maintain records of all tests conducted including the results and any other information required by the DOH. The DOH is required to adopt rules to create and oversee the program which must, at a minimum, include:

- Permissible levels of variation in potency labeling and standards requiring THC be consistently distributed throughout edible marijuana products;
- Permissible levels of contaminants and mandatory testing for contaminants including, but not limited to, testing for microbiological impurity, residual solvents, and pesticide residues;
- The destruction of marijuana determined to be inaccurately labeled or unsafe for human consumption after the MMTC has an opportunity to take remedial action;
- The collection, storage, handling, recording, and destruction of samples of marijuana by ITLs; and
- Security, inventory tracking, and record retention.

The bill also requires the DOH to reduce or suspend any testing requirement in its quality control program if the number of licensed and certified ITLs is insufficient to process the tests necessary to meet patient demand.

Seed-to-Sale Tracking System

The bill requires the DOH to establish, maintain, and control a computer software tracking system that traces marijuana from seed to sale. The tracking system must allow real-time, 24-hour access by the DOH to data from all MMTCs and ITLs and must, at a minimum, include notification of when marijuana seeds are planted, when marijuana plants are harvested and destroyed, and when marijuana is transported, sold, stolen, diverted, or lost. Each MMTC must use the seed-to-sale tracking system selected by the DOH.

MMTC Requirements

The requirements for MMTCs are substantially similar to the requirements for DOs in current law. The bill amends requirements for MMTCs so that:

- MMTCs are required to maintain compliance with all the representations made to the DOH in the MMTC's application for registration.
  - Upon request, the DOH may grant an MMTC one or more variances from the representations made in the MMTC's application.
  - Consideration of such a variance shall be based upon the individual facts and circumstances surrounding the request.
  - A variance may not be granted unless the requesting MMTC can demonstrate to the department that it has a proposed alternative to the specific representation made in its application which fulfills the same or a similar purpose as the specific representation in a way that the DOH can reasonably determine will not be a lower standard than the specific representation in the application.
- MMTCs are required to label all marijuana with the concentration of THC and CBD in the product and with the recommended dose for the qualifying patient receiving it.
- MMTCs are allowed to produce edible products, but may not produce such items that are designed to be attractive to children. Additionally, MMTCs must meet all food safety standards established in state and federal law, including, but not limited to, the identification of the serving size and the amount of THC in each serving.
- MMTCs may not dispense marijuana from more than three dispensing facilities. This limitation does not apply to retail facilities that dispense only low-THC cannabis and sell marijuana delivery devices to qualified patients.
- When transporting marijuana, a copy of the transportation manifest must be in the vehicle at all times.

The bill requires the DOH to approve an MMTC's request for a change in ownership, equity structure, or transfer of registration to a new entity under certain conditions, and requires the DOH to adopt by rule a process for approving MMTC changes in ownership and changes in an MMTC owner's investment interest.

Rulemaking

The bill requires the DOH to adopt emergency rules pursuant to s. 120.54(4), F.S., as necessary to implement the section. The bill states that if an emergency rule adopted under this section is voided due to being held unconstitutional or an invalid exercise of delegated legislative authority, the DOH and any applicable boards may adopt an emergency rule to replace the voided rule. However, if the second emergency rule is voided, the DOH and the applicable boards must adopt rules based on standard procedures.

The bill exempts emergency rules from the requirement to make findings pursuant to s. 120.54(4)(a), F.S.;[65] from ss. 120.54(3)(b),[66] 120.541,[67] and 120.54(4)(c), F.S.[68] The DOH and applicable boards must meet the procedural requirements in s. 120.54(2)(a), F.S.,[69] if the DOH or the applicable boards have, before the effective date of the act, held any public workshops or hearings on the subject matter of the emergency rules. Additionally, challenges to emergency rules adopted under this section are subject to the time schedules provided in s. 120.56(5), F.S.[70] Emergency rules adopted under this section remain in effect until they are replaced by rules adopted through normal procedures. The DOH must begin nonemergency rulemaking by January 1, 2018, and may not use emergency rulemaking procedures after that date, unless replacing emergency rules deemed invalid.

Miscellaneous Provisions

The bill:

- Specifies that nothing in the act limits the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy and that an employer is not required to accommodate the use of marijuana in the workplace or any employee working while under the influence of the marijuana.
- Specifies that nothing in the section creates a cause of action against an employer for wrongful discharge or discrimination.
- Creates an additional exemption from criminal penalties related to marijuana for research institutions established by a public postsecondary educational institution, such as the H. Lee Moffitt Cancer Center and Research Institute, and for state universities that have achieved preeminent state research university designation.[71]

[65] Section 120.54(a)3., F.S., requires the agency publishing emergency rules to also publish in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances.
[66] The requirement to prepare a statement of estimated regulatory cost (SERC) and to consider the impact of rules on small business, small counties, and small cities.
[67] Detailing the requirements of a SERC.
[68] Restricting an emergency rule from being effective for more than 90 days with some exceptions.
[69] Requiring notice of rule development be published prior to filing for rule adoption.
[70] The DOAH has seven days to assign an administrative law judge who must conduct the hearing within 14 total days (including the days used in assigning the judge). The judge then has 14 days after the hearing to render a decision.
[71] Pursuant to s. 1001.7065, F.S.

The Medical Marijuana Research and Education Act

The bill creates s. 1004.4351, F.S., to create the Medical Marijuana Research and Education Act. The act:

- Establishes the Coalition for Medicinal Cannabis Research and Education (Coalition) within the H. Lee Moffitt Cancer Center and Research Institute, Inc. (MCCRI) and provides that the Coalition's purpose is to conduct rigorous scientific research, provide education, disseminate research, and to guide policy development for the adoption of a statewide policy on ordering and dosing practices for the medicinal use of cannabis.
  - Beginning January 1, 2018, the DOH must submit quarterly to the coalition information for each patient registered with the compassionate use registry, including the patient's debilitating medical condition, the amount and duration of the patient's marijuana recommendation, the method of marijuana administration and any delivery device, and the patient's certifying physician.
  - The coalition must review these data and determine whether state law and rules should be modified to address abuse or fraud of the system established in Article X, section 29 of the State Constitution, and state law and rules, and if so, must include recommendations to address such abuse or fraud.
- Creates the Medicinal Cannabis Research and Education Board (Board) to direct the Coalition's operations. Additionally, the bill specifies Board membership requirements and requires the Board to:
  - Advise the Board of Governors, the State Surgeon General, the Governor, and the Legislature with respect to medicinal cannabis research and education in Florida.
  - Explore methods of implementing and enforcing medicinal cannabis laws in relation to cancer control, research, treatment, and education.
  - Annually adopt a plan for medicinal cannabis research, known as the Medicinal Cannabis Research and Education Plan (Plan) in accordance with state law, and must include recommendations for the coordination and integration of medical, nursing, paramedical, community, and other resources connected with the treatment of debilitating medical conditions, research related to the treatment of such conditions, and education.
  - Issue an annual report, by February 15, to the Governor, the President of the Senate, and the Speaker of the House Representatives on research projects, community outreach initiatives, and future plans for the Coalition.
- Provides that the Coalition must be administered by a director who, subject to Board approval, must:
  - Propose a budget.
  - Foster the collaboration of scientists, researchers, and other appropriate personnel.
  - Identify and prioritize the Coalition's research.
  - Prepare the Plan for submission to the Board.
  - Apply for grants to obtain funding for the Coalition's research.
  - Perform other Board specified duties.
- Requires the MCCRI to allocate staff, information, and assistance to assist the Board.

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article X, section 29 of the State Constitution is a unique provision in that it directs a state agency, the DOH, to implement its provisions without requiring implementing legislation. However, Article X, section 29(4)(e) of the State Constitution, does provide that nothing in that section shall limit the Legislature from enacting laws consistent with the section. Given the novelty of the constitutional provision, it is unclear how the courts will interpret its provisions as well as the interaction between its provisions and implementing legislation and rules.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates that the bill has a positive but indeterminate fiscal impact on state revenues.

B. Private Sector Impact:

The bill will create opportunities for new MMTCs that are called for under its provisions, and for independent testing laboratories. Existing DOs may face a more competitive marketplace due to the increase in the number of allowed suppliers of marijuana, but the number of patients using their services is also expected to grow.

Patients and caregivers will be required to pay for identification cards, and caregivers and employees of MMTCs must pay for background screening.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact on the DOH due to the cost of increased regulatory, training, and other educational activities required by the bill, which should be offset by fees and fines the DOH is allowed to assess. The DOH estimates that fees and

fines may generate between $6.1 million and $8.6 million while total expenditures may be between $6 million and $8.9 million.[72]

The FDLE estimates that revenues derived from the bill for the FDLE may range from $9 million to $18 million generated by fees for criminal history records checks.[73] The FDLE analysis indicates that implementation of the bill will require 16 FTEs to perform criminal history background checks, two additional toxicology analysts, and two additional fingerprint analysts. Cost estimates provided by the FDLE for the additional staff are $1,278,157 in Fiscal Year 2017-2018, and $1,197,237 on a recurring basis; however, fees for criminal history records checks should offset these costs.[74]

The bill may have an indeterminate fiscal impact on local governments. Local governments may see a positive fiscal impact from fees associated with licensing and inspecting additional MMTC facilities as permitted by current law and may derive additional tax revenue from the sale of marijuana. Local governments may see a negative fiscal impact due to the expenses associated with implementing ordinances and undertaking regulatory activities required by such ordinances.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the bill allows MMTCs to use contractors in general, it is unclear from the text of the bill what limits are placed on how an MMTC may use a contractor. The bill should be clarified to specify the duties a contractor may perform for an MMTC.

The FDLE notes that entering results obtained from a state or criminal history record check into a registry, as the bill appears to require DOH to do with information it receives from physicians, patients and caregivers, is prohibited by Public Law 92-544. Similarly, the provision in the bill that the application form for registration as an MMTC must demonstrate that all owners and managers have been fingerprinted and have successfully passed a level 2 background screening is also prohibited by Public Law 92-544.[75]

The bill allows a physician to certify an amount greater than a 90-day supply of marijuana if he or she has reasonable belief that the patient will use the additional marijuana in a medically appropriate way; however, the bill does not apply the exception to the 90-day supply limit of marijuana to the exemptions from criminal penalties contained in chapter 893, F.S. The bill should be clarified to apply the exception to the 90-day supply limit of marijuana consistently throughout the bill.

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[72] The DOH states that expenditures are highly dependent on the number of qualifying patients. See DOH, *Senate Bill 406 Analysis* (Feb. 14, 2017) (on file with the Senate Committee on Health Policy).

[73] The fee depends on whether or not caregivers are intended to be entered into the clearinghouse. See FDLE, *Senate Bill 406 Analysis* (Feb. 15, 2017) (on file with the Senate Committee on Health Policy).

[74] FDLE, *Senate Bill 406 Analysis* (Feb 15, 2017) (on file with the Senate Appropriations Subcommittee on Finance and Tax).

[75] FDLE, *Senate Bill 406 Analysis* (Feb 15, 2017) (on file with the Senate Appropriations Subcommittee on Finance and Tax).

The bill prohibits a caregiver from receiving compensation, other than actual expenses incurred, but also provides that a nursing home or assisted living facility may not prevent a qualifying resident patient from hiring a caregiver. A common definition of "hiring" is "engaging the services of [a person] for a fee"[76] which appears to be inconsistent with the compensation prohibition.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.986, 381.987, 385.211, 499.0295, and 1004.441.

The bill creates section 1004.4351 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 25, 2017:
The committee substitute:

- Requires a physician who issues a physician certification for marijuana to successfully complete the 4-hour course each time he or she renews his or her license.
- Requires a physician to review the compassionate use registry to confirm that a patient who is seeking certification does not have an active certification issued by another physician.
- Deletes the requirement that a certifying physician submit a patient treatment plan quarterly to the University of Florida College of Pharmacy.
- Requires that a Florida resident seeking certification must provide proof of permanent residence for a patient or, for a minor patient, for the patient's parent or guardian.
- Requires that a patient seeking certification who is not a Florida resident must provide proof that he or she is eligible to receive marijuana in his or her state of permanent residence and that he or she will be remaining in Florida for at least three consecutive months.
- Provides that a nursing home or assisted living facility may not prevent a qualifying patient residing in the nursing home or assisted living facility from hiring a caregiver, but a nursing home or assisted living facility may prohibit its employees from acting as caregivers to residents of the nursing home or assisted living facility, and a nursing home or assisted living facility is not required to provide a caregiver to a resident who is a qualifying patient.
- Provides that the DOH must identify applicants with strong diversity plans, and implement training programs and other educational programs to enable minority persons, minority businesses, and veteran businesses to compete for MMTC registration and contracts.

[76] *The American Heritage Dictionary*(2nd coll. ed. 1982)

- Requires an MMTC applicant to demonstrate the ability to implement a diversity plan that promotes and ensures the involvement of minority persons and minority business enterprises or veteran business enterprises in ownership, management, employment, and contracting opportunities.
- Limits MMTCs to three dispensing facilities. This limitation does not apply to facilities that only dispense low-THC cannabis and sell marijuana delivery devices to qualified patients.
- Provides that the DOH shall approve an MMTC's request for a change in ownership, equity structure, or transfer of registration to a new entity that meets the requirements of an MMTC application if persons seeking a five percent or greater equity interest in the MMTC are fingerprinted and have successfully passed a level 2 background screening. A request for a change in ownership, equity structure, or transfer of registration is deemed approved if not denied by the DOH within 15 days.
- Beginning January 1, 2018, requires the DOH to submit quarterly to the Coalition for Medicinal Cannabis Research and Education information for each patient registered with the compassionate use registry, including the patient's debilitating medical condition, the amount and duration of the patient's marijuana recommendation, the method of marijuana administration and any delivery device, and the patient's certifying physician. The coalition must review these data and determine whether state law and rules should be modified to address abuse or fraud of the system established in Article X, section 29 of the State Constitution, and state law and rules, and if so, must include recommendations to address such abuse or fraud.

CS by Health Policy on April 3, 2017:
The CS amends SB 406 to:

- Add legislative intent.
- Reinstate the requirement that a second physician confirm a diagnosis when certifying a person under the age of 18 and require a parent, legal guardian, caregiver, or health care provider to purchase marijuana for qualifying patients under the age of 18.
- Allow a physician to certify out of state patients that meet Florida requirements for treatment with marijuana.
- Allow a physician to certify a patient for greater than a 90-day supply if the physician believes the patient will use the marijuana appropriately.
- Specify that MMTCs may not advertise services that they are not registered to provide.
- Prohibit any person or entity from offering or advertising services as an MMTC without being registered as an MMTC and provide penalties for unlicensed activity.
- Require the DOH to register five additional MMTCs by October 3, 2017, including one that is a member of the Black Farmers and Agriculturalists Association.
- Require the Department of Health to add four new MMTCs within six months after the registration of each instance of 75,000 patients in the Compassionate Use Registry.
- Require that all MMTC applicants be registered to do business in Florida for at least five consecutive years prior to submitting their application.
- Prohibit any person or entity from being issued more than one MMTC registration.

- Require the DOH to license ITLs (clinical laboratories licensed by the AHCA are exempt from this requirement). ITLs must also be certified by the DOH to perform all required tests. The DOH must certify an ITL that has third-party accreditation from an accrediting body approved by the DOH. The DOH must adopt rules for licensure and certification of ITLs.
- Require the DOH to establish a quality control program for the testing of marijuana. The program must require MMTCs to submit samples of marijuana to an ITL to ensure minimum standards are met. The DOH must adopt rules to create and oversee the program.
- Require the DOH to establish, maintain, and control a seed-to-sale tracking system.
- Authorize an employer to deny accommodation for the ingestion of marijuana in the workplace or for any employee working while under the influence of marijuana.
- Specify that the section does not create a cause of action for wrongful discharge or discrimination.
- Incorporate an exemption from criminal laws for research institutions performing research on marijuana.
- Require the DOH to abide by the provisions of ch. 120, F.S., when adopting rules to implement this section and allows the department to use emergency rulemaking procedures.
- Establish the "Medical Marijuana Research and Education Act" to:
  - Create the Coalition for Medical Marijuana Research and Education within the H. Lee Moffitt Cancer Center and Research Institute, Inc.;
  - Task the coalition with conducting rigorous scientific research, providing education, disseminating research, and guiding policy for the adoption of a statewide policy on ordering and dosing practices for medical marijuana;
  - Specify the make-up of the coalition including the duties of the director of the coalition;
  - Require the coalition to annually adopt a research plan; and
  - Require the coalition to annually report to the Governor and the Legislature on research projects, community outreach, and future plans.

B. Amendments:

None.

By the Committee on Health Policy; and Senators Bradley, Young, and Hutson

588-03368A-17 2017406c1

A bill to be entitled

An act relating to compassionate use of low-THC cannabis and marijuana; amending s. 381.986, F.S.; providing legislative intent; defining and redefining terms; authorizing physicians to issue physician certifications to specified patients who meet certain conditions; authorizing physicians to make specific determinations in certifications; requiring physicians to meet certain conditions to be authorized to issue and make determinations in physician certifications; specifying certain persons who may assist a qualifying patient under the age of 18 in the purchasing and administering of marijuana; prohibiting qualifying patients under the age of 18 from purchasing marijuana; providing that a physician may in certain circumstances certify an amount greater than a 90-day supply; requiring written consent of a parent or legal guardian for the treatment of minors; requiring that certain physicians annually reexamine and reassess patients and update patient information in the compassionate use registry; revising criminal penalties; prohibiting a medical marijuana treatment center from advertising services it is not authorized to provide; providing fines; prohibiting a person or entity from advertising or providing medical marijuana treatment center services without being registered with the department as a medical marijuana treatment center; providing penalties; authorizing a distance learning format for a specified course and reducing

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the number of hours required for the course; providing that physicians who meet specified requirements are grandfathered for the purpose of specified education requirements; authorizing qualifying patients to designate caregivers; requiring caregivers to meet specified requirements; prohibiting a qualifying patient from designating more than one caregiver at any given time; providing exceptions; requiring the Department of Health to register caregivers meeting certain requirements on the compassionate use registry; revising the entities to which the compassionate use registry must be accessible; requiring the department to adopt certain rules by a specified date; authorizing the department to charge a fee for identification cards; requiring the department to begin issuing identification cards to qualified registrants by a specific date; providing requirements for the identification cards; requiring the department to register certain dispensing organizations as medical marijuana treatment centers by a certain date; requiring the department to register additional medical marijuana treatment centers in accordance with a specified schedule; deleting obsolete provisions; revising the operational requirements for medical marijuana treatment centers; authorizing the department to waive certain requirements under specified circumstances; requiring that certain receptacles be childproof; requiring that additional information be included on certain labels; requiring

that a medical marijuana treatment center comply with certain standards in the production and dispensing of edible or food products; requiring a medical marijuana treatment center to enter additional information into the compassionate use registry; requiring a medical marijuana treatment center to keep a copy of a transportation manifest in certain vehicles at certain times; requiring the department to establish a quality control program that requires medical marijuana treatment centers to submit samples from each batch or lot of marijuana to an independent testing laboratory; requiring a medical marijuana treatment center to maintain records of all tests conducted; requiring the department to adopt rules to create and oversee the quality control program; providing that the department must license independent testing laboratories; authorizing an independent testing laboratory to collect and accept samples of, possess, store, transport, and test marijuana; prohibiting a person with an ownership interest in a medical marijuana treatment center from owning an independent testing laboratory; requiring the department to develop rules and a process for licensing requirements; authorizing the department to impose application and renewal fees; specifying that an independent testing laboratory must be certified to perform required tests; requiring the department to suspend or reduce any mandatory testing if the number of licensed and certified independent testing laboratories is insufficient to process the

tests necessary to meet the patient demand for medical marijuana treatment centers; providing that an independent testing laboratory may only accept certain samples; requiring the department to adopt rules related to ownership changes or changes in an owner's investment interest; requiring the department to establish, maintain, and control a seed-to-sale tracking system for marijuana; providing applicability; conforming provisions to changes made by the act; providing that certain research institutions may possess, test, transport, and dispose of marijuana subject to certain conditions and as provided by department rule; providing for the use of emergency rulemaking procedures by the department; creating s. 1004.4351, F.S.; providing a short title; providing legislative findings; defining terms; establishing the Coalition for Medical Marijuana Research and Education within the H. Lee Moffitt Cancer Center and Research Institute, Inc.; providing a purpose for the coalition; establishing the Medical Marijuana Research and Education Board to direct the operations of the coalition; providing for the appointment of board members; providing for terms of office, reimbursement for certain expenses, and the conduct of meetings of the board; authorizing the board to appoint a coalition director; prescribing the duties of the coalition director; requiring the board to advise specified entities and officials regarding medical marijuana research and education in this

state; requiring the board to annually adopt a Medical Marijuana Research and Education Plan; providing requirements for the plan; requiring the board to issue an annual report to the Governor and the Legislature by a specified date; specifying responsibilities of the H. Lee Moffitt Cancer Center and Research Institute, Inc.; amending ss. 381.987, 385.211, 499.0295, and 1004.441, F.S.; conforming provisions to changes made by the act; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Section 381.986, Florida Statutes, is amended to read:

381.986 Compassionate use of low-THC ~~and medical~~ cannabis and marijuana.—

(1) LEGISLATIVE INTENT.—

(a) It is the intent of the Legislature to implement s. 29, Art. X of the State Constitution by creating a unified regulatory structure within the framework of this section for the acquisition, cultivation, possession, processing, transfer, transportation, sale, distribution, and dispensing of marijuana, products containing marijuana, related supplies, and educational materials to qualifying patients or their caregivers.

(b) The Legislature intends that all rules adopted by the Department of Health to implement this section be adopted pursuant to s. 120.536(1) or s. 120.54. The Legislature intends

that the department use emergency rulemaking procedures pursuant to s. 120.54(4) to adopt rules under this section if necessary to meet any deadline for rulemaking established in s. 29, Art. X of the State Constitution.

(c) Further, the Legislature intends that all registrations for the purposes specified in paragraph (a) be issued solely in accordance with the requirements of this section and all rules adopted under this section.

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

(a) "Cannabis delivery device" means an object used, intended for use, or designed for use in preparing, storing, ingesting, inhaling, or otherwise introducing marijuana ~~low-THC cannabis or medical cannabis~~ into the human body.

(b) "Caregiver" has the same meaning as provided in s. 29, Art. X of the State Constitution.

(c) "Chronic nonmalignant pain" means pain that is caused by a debilitating medical condition or that originates from a debilitating medical condition and persists beyond the usual course of that debilitating medical condition.

(d) "Close relative" means a spouse, parent, sibling, grandparent, child, or grandchild, whether related by whole or half blood, by marriage, or by adoption.

(e) ~~(b)~~ "Debilitating medical condition" has the same meaning as provided in s. 29, Art. X of the State Constitution ~~"Dispensing organization" means an organization approved by the department to cultivate, process, transport, and dispense low-THC cannabis or medical cannabis pursuant to this section~~.

(f) ~~(c)~~ "Independent testing laboratory" means a laboratory, including the managers, employees, or contractors of the

laboratory, which has no direct or indirect interest in a medical marijuana treatment center ~~a dispensing organization~~.

(g) ~~(d)~~ "Legal representative" means the qualifying ~~qualified~~ patient's parent, legal guardian acting pursuant to a court's authorization as required under s. 744.3215(4), health care surrogate acting pursuant to the qualifying ~~qualified~~ patient's written consent or a court's authorization as required under s. 765.113, or an individual who is authorized under a power of attorney to make health care decisions on behalf of the qualifying ~~qualified~~ patient.

(h) ~~(c)~~ "Low-THC cannabis" means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed only by a medical marijuana treatment center ~~from a dispensing organization~~.

(i) ~~(f)~~ "Marijuana" has the same meaning as provided in s. 29, Art. X of the State Constitution ~~"Medical cannabis" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization for medical use by an eligible patient as defined in s. 499.0295~~.

(j) "Medical marijuana treatment center" or "MMTC" has the same meaning as provided in s. 29, Art. X of the State Constitution.

(k) ~~(g)~~ "Medical use" has the same meaning as provided in s. 29, Art. X of the State Constitution ~~means administration of the ordered amount of low-THC cannabis or medical cannabis~~. The term does not include the:

1. Possession, use, or administration of marijuana ~~low-THC cannabis or medical cannabis~~ by smoking.

2. Possession, use, or administration of marijuana that was not purchased or acquired from an MMTC registered with the Department of Health.

3. ~~2.~~ Transfer of marijuana ~~low-THC cannabis or medical cannabis~~ to a person other than the qualifying ~~qualified~~ patient ~~for whom it was ordered~~ or the qualifying ~~qualified~~ patient's caregiver ~~legal representative~~ on behalf of the qualifying ~~qualified~~ patient.

4. Use or administration of any type or amount of marijuana not specified on the qualifying patient's physician certification.

5. ~~3.~~ Use or administration of marijuana ~~low-THC cannabis or medical cannabis~~:

a. On any form of public transportation.

b. In any public place.

c. In a qualifying ~~qualified~~ patient's place of employment, if restricted by his or her employer.

d. In a state correctional institution as defined in s. 944.02 or a correctional institution as defined in s. 944.241.

e. On the grounds of a preschool, primary school, or secondary school.

f. On a school bus or in a vehicle, aircraft, or motorboat.

(l) ~~(h)~~ "Qualifying ~~Qualified~~ patient" has the same meaning

as provided in s. 29, Art. X of the State Constitution but also includes eligible patients, as that term is defined in s. 499.0295, and patients who are issued a physician certification under subparagraph (3)(a)2. or subparagraph (3)(a)3. A patient is not a qualifying patient unless he or she is registered with the department and has been issued a compassionate use registry identification card ~~means a resident of this state who has been added to the compassionate use registry by a physician licensed under chapter 458 or chapter 459 to receive low-THC cannabis or medical cannabis from a dispensing organization~~.

(m) ~~(i)~~ "Smoking" means burning or igniting a substance and inhaling the smoke. Smoking does not include the use of a vaporizer.

(3) ~~(2)~~ PHYSICIAN CERTIFICATION ~~ORDERING~~.—

(a) A physician is authorized to issue a physician certification to:

1. A patient suffering from a debilitating medical condition, which allows the patient to receive marijuana for the patient's medical use;

2. A ~~order low-THC cannabis to treat a qualified~~ patient suffering from ~~cancer or~~ a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms, which allows the patient to receive low-THC cannabis for the patient's medical use;

3. A patient suffering from chronic nonmalignant pain, if the physician has diagnosed an underlying debilitating medical condition as the cause of the pain, which allows the patient to receive marijuana for the patient's medical use ~~order low-THC cannabis~~ to alleviate the patient's pain ~~symptoms of such~~

~~disease, disorder, or condition, if no other satisfactory alternative treatment options exist for the qualified patient~~;

4. ~~order medical cannabis to treat~~ An eligible patient as defined in s. 499.0295, which allows the patient to receive marijuana for the patient's medical use; or

5. A patient who is not a resident of this state; who qualifies under subparagraph 1., subparagraph 2., subparagraph 3., or subparagraph 4.; and who can lawfully obtain marijuana through a medical marijuana program in the state that he or she resides in.

(b) In the physician certification, the physician may also specify one or more ~~or order a~~ cannabis delivery devices to assist with ~~device for~~ the patient's medical use of marijuana. ~~low-THC cannabis or medical cannabis,~~

(c) A physician may certify a patient and specify a delivery device under paragraphs (a) and (b) only if the physician:

1. ~~(a)~~ Holds an active, unrestricted license as a physician under chapter 458 or an osteopathic physician under chapter 459;

~~(b) Has treated the patient for at least 3 months immediately preceding the patient's registration in the compassionate use registry;~~

2. ~~(c)~~ Has successfully completed the course and examination required under paragraph (5)(a) ~~(4)(a)~~;

3. Has conducted a physical examination and made a full assessment of the medical history of the patient;

4. Has determined that, in the physician's professional opinion, the patient meets one or more of the criteria specified in paragraph (a);

5.~~(d)~~ Has determined that the medical use of marijuana would likely outweigh the potential health risks to ~~of treating the patient with low-THC cannabis or medical cannabis are reasonable in light of the potential benefit to~~ the patient. If a patient is younger than 18 years of age:~~,~~

a. A second physician must concur with this determination, and such determination must be documented in the patient's medical record;

b. Only a parent, legal guardian, caregiver, or health care provider may assist the qualifying patient in the purchasing and administering of marijuana for medical use; and

c. The qualifying patient may not purchase marijuana;

6.~~(e)~~ Registers as the patient's physician ~~orderer of low-THC cannabis or medical cannabis for the named patient~~ on the compassionate use registry maintained by the department and updates the registry to reflect ~~the contents of the order, including~~ the amount of marijuana ~~low-THC cannabis or medical cannabis~~ that will provide the patient with not more than a 90-day ~~45-day~~ supply and a cannabis delivery device needed by the patient for the medical use of marijuana ~~low-THC cannabis or medical cannabis~~. A physician may certify an amount greater than a 90-day supply of marijuana if the physician has a reasonable belief that the patient will use the additional marijuana in a medically appropriate way. If the physician's recommended amount of marijuana for a 90-day supply changes, the physician must ~~also~~ update the registry within 7 days after the ~~any~~ change is made ~~to the original order to reflect the change~~. The physician shall deactivate the registration of the patient ~~and the patient's legal representative~~ when the physician no longer

recommends the medical use of marijuana for the patient ~~treatment is discontinued~~;

7.~~(f)~~ Maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the marijuana ~~low-THC cannabis or medical cannabis~~;

8.~~(g)~~ Submits the patient treatment plan quarterly to the University of Florida College of Pharmacy for research on the safety and efficacy of marijuana ~~low-THC cannabis and medical cannabis~~ on patients; and

9.~~(h)~~ Obtains the voluntary written informed consent of the patient or the patient's legal representative to treatment with marijuana ~~low-THC cannabis~~ after sufficiently explaining the current state of knowledge in the medical community of the effectiveness of treatment of the patient's condition with marijuana ~~low-THC cannabis, the medically acceptable alternatives,~~ and the potential risks and side effects. If the patient is a minor, the patient's parent or legal guardian must consent to treatment in writing. If the patient is an eligible patient as defined in s. 499.0295, the physician must obtain written informed consent as defined in and required by s. 499.0295.~~,~~

(d) At least annually, a physician must recertify the qualifying patient pursuant to paragraph (c).

~~(i) Obtains written informed consent as defined in and required under s. 499.0295, if the physician is ordering medical cannabis for an eligible patient pursuant to that section; and~~

(e)~~(j)~~ A physician may not issue a physician certification if the physician is ~~not~~ a medical director employed by an MMTC ~~a~~

~~dispensing organization~~.

(f) An order for low-THC cannabis or medical cannabis issued pursuant to former s. 381.986, Florida Statutes 2016, and registered with the compassionate use registry on the effective date of this act, shall be considered a physician certification issued pursuant to this subsection. The details and expiration date of such certification must be identical to the details and expiration date of the order as logged in the compassionate use registry. Until the department begins issuing compassionate use registry identification cards, all patients with such orders shall be considered qualifying patients, notwithstanding the requirement that a qualifying patient have a compassionate use registry identification card.

(4) ~~(3)~~ PROHIBITED ACTS ~~PENALTIES~~.—

(a) A physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the physician issues a physician certification for marijuana to ~~orders low-THC cannabis for~~ a patient in a manner other than as required in subsection (3) ~~without a reasonable belief that the patient is suffering from:~~

~~1. Cancer or A physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms that can be treated with low-THC cannabis; or~~

~~2. Symptoms of cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms that can be alleviated with low-THC cannabis~~.

~~(b) A physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the~~

~~physician orders medical cannabis for a patient without a reasonable belief that the patient has a terminal condition as defined in s. 499.0295.~~

(b) ~~(c)~~ A person who fraudulently represents that he or she has a debilitating medical condition ~~cancer~~, a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms, chronic nonmalignant pain, or a terminal condition as defined in s. 499.0295 to a physician for the purpose of being issued a physician certification for marijuana ~~ordered low-THC cannabis, medical cannabis,~~ or a cannabis delivery device by such physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) ~~(d)~~ A qualifying patient ~~an eligible patient as defined in s. 499.0295~~ who uses marijuana ~~medical cannabis~~, and such patient's caregiver ~~legal representative~~ who administers marijuana ~~medical cannabis~~, in plain view of or in a place open to the general public, on the grounds of a school, or in a school bus, vehicle, aircraft, or motorboat, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) A qualifying patient or caregiver who cultivates marijuana or who purchases or acquires marijuana from any person or entity other than an MMTC commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(e) A caregiver who violates any of the applicable provisions of this section or applicable department rules commits, upon the first offense, a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and,

upon the second and subsequent offenses, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(f) ~~(e)~~ A physician who issues a physician certification for marijuana ~~orders low-THC cannabis, medical cannabis,~~ or a cannabis delivery device and receives compensation from an MMTC ~~a dispensing organization~~ related to issuing the physician certification for marijuana ~~the ordering of low-THC cannabis, medical cannabis,~~ or a cannabis delivery device is subject to disciplinary action under the applicable practice act and s. 456.072(1)(n).

(g) An MMTC that advertises or holds out to the public that it may provide services other than services for which it is registered to provide violates this section, and the department may impose a fine on the MMTC pursuant to paragraph (10)(h).

(h) A person or entity that offers or advertises services as an MMTC without registering as an MMTC with the department violates this section. The operation or maintenance of a facility as an MMTC, or the performance of a service that requires registration, without proper registration is a violation of this section.

1. If after receiving notification from the department, such person or entity fails to cease operation, the department may impose an administrative fine of up to $10,000 per violation. Each day of continued operation is a separate offense.

2. The department or any state attorney may, in addition to other remedies provided in this section, bring an action for an injunction to restrain any unauthorized activity or to enjoin

the future operation or maintenance of the unauthorized dispensing organization or entity or the performance of any service in violation of this section until compliance with this section and department rules has been demonstrated to the satisfaction of the department.

3. If found to be in violation of this paragraph, the department may assess reasonable investigative and legal costs for prosecution of the violation against the person or entity.

(5) ~~(4)~~ PHYSICIAN EDUCATION.—

(a) Before a physician may issue a physician certification pursuant to subsection (3) ~~ordering low-THC cannabis, medical cannabis, or a cannabis delivery device for medical use by a patient in this state~~, the appropriate board shall require the ~~ordering~~ physician to successfully complete a 4-hour ~~an 8-hour~~ course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which ~~that~~ encompasses the clinical indications for the appropriate use of marijuana ~~low-THC cannabis and medical cannabis~~, the appropriate cannabis delivery devices, the contraindications for such use, and the relevant state and federal laws governing the issuance of physician certifications ~~ordering~~, as well as dispensing~~,~~ and possessing ~~of~~ these substances and devices. The course and examination shall be administered at least quarterly ~~annually~~. Successful completion of the course may be used by a physician to satisfy 4 hours ~~8 hours~~ of the continuing medical education requirements required by his or her respective board for licensure renewal. This course may be offered in a distance learning format, including an electronic, online format that is available on request. Physicians who have completed an 8-hour

course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which encompasses the clinical indications for the appropriate use of marijuana and who are registered in the compassionate use registry on the effective date of this act are deemed to meet the requirements of this paragraph.

(b) The appropriate board shall require the medical director of each MMTC ~~dispensing organization~~ to hold an active, unrestricted license as a physician under chapter 458 or as an osteopathic physician under chapter 459 and successfully complete a 2-hour course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which ~~that~~ encompasses appropriate safety procedures and knowledge of marijuana ~~low-THC cannabis, medical cannabis,~~ and cannabis delivery devices.

~~(c) Successful completion of the course and examination specified in paragraph (a) is required for every physician who orders low-THC cannabis, medical cannabis, or a cannabis delivery device each time such physician renews his or her license. In addition, successful completion of the course and examination specified in paragraph (b) is required for the medical director of each dispensing organization each time such physician renews his or her license.~~

(c) ~~(d)~~ A physician who fails to comply with this subsection and issues a physician certification for marijuana ~~who orders low-THC cannabis, medical cannabis,~~ or a cannabis delivery device may be subject to disciplinary action under the applicable practice act and under s. 456.072(1)(k).

(6) CAREGIVERS.—

(a) During the course of registration with the department for inclusion on the compassionate use registry, or at any time while registered, a qualifying patient may designate an individual as his or her caregiver to assist him or her with the medical use of marijuana. The designated caregiver must be 21 years of age or older, unless the patient is a close relative of the caregiver; must agree in writing to be the qualifying patient's caregiver; may not receive compensation, other than actual expenses incurred, for assisting the qualifying patient with the medical use of marijuana, unless the caregiver is acting pursuant to employment in a licensed facility in accordance with subparagraph (c)2.; and must pass a level 2 screening pursuant to chapter 435, unless the patient is a close relative of the caregiver.

(b) A qualifying patient may have only one designated caregiver at any given time unless all of the patient's caregivers are his or her close relatives or legal representatives.

(c) A caregiver may assist only one qualifying patient at any given time unless:

1. All qualifying patients the caregiver is assisting are close relatives of each other and the caregiver is the legal representative of at least one of the patients; or

2. All qualifying patients the caregiver is assisting are receiving hospice services, or are residents, in the same assisted living facility, nursing home, or other licensed facility and have requested the assistance of that caregiver with the medical use of marijuana; the caregiver is an employee of the hospice or licensed facility; and the caregiver provides

personal care or services directly to clients of the hospice or licensed facility as a part of his or her employment duties at the hospice or licensed facility.

(d) The department must register a caregiver on the compassionate use registry and issue him or her a caregiver identification card if he or she is designated by a qualifying patient pursuant to paragraph (a) and meets all of the requirements of this subsection and department rule.

(7)~~(5)~~ DUTIES OF THE DEPARTMENT.—The department shall:

(a) Create and maintain a secure, electronic, and online compassionate use registry for the registration of physicians, patients, and caregivers ~~the legal representatives of patients~~ as provided under this section. The registry must be accessible to:

1. Practitioners licensed under chapter 458 or chapter 459, to ensure proper care for patients requesting physician certifications;

2. Practitioners licensed to prescribe prescription drugs, to ensure proper care for patients before prescribing medications that may interact with the medical use of marijuana;

3. Law enforcement agencies, to verify the authorization of a qualifying patient or a patient's caregiver to possess marijuana or a cannabis delivery device; and

4. MMTCs, to ~~a dispensing organization to~~ verify the authorization of a qualifying patient or a patient's caregiver ~~legal representative~~ to possess marijuana ~~low-THC cannabis, medical cannabis,~~ or a cannabis delivery device and to record the marijuana ~~low-THC cannabis, medical cannabis,~~ or cannabis delivery device dispensed.

The registry must prevent ~~an~~ active registration of a patient by multiple physicians.

(b) By July 3, 2017, adopt rules establishing procedures for the issuance, annual renewal, suspension, and revocation of compassionate use registry identification cards for patients and caregivers. The department may charge a reasonable fee associated with the issuance and renewal of patient and caregiver identification cards. By October 3, 2017, the department shall begin issuing identification cards to adult patients who have a physician certification that meets the requirements of subsection (3); minor patients who have a physician certification that meets the requirements of subsection (3) and the written consent of a parent or legal guardian; and caregivers registered pursuant to subsection (6). In addition to the other requirements of this section, the department may issue a compassionate use registry identification card to a patient who is not a resident of this state only after the department has verified that the patient can lawfully obtain marijuana through a medical marijuana program in the state that he or she resides in. Patient and caregiver identification cards must be resistant to counterfeiting and tampering and must include at least the following:

1. The name, address, and date of birth of the patient or caregiver, as appropriate;

2. A full-face, passport-type, color photograph of the patient or caregiver, as appropriate, taken within the 90 days immediately preceding registration;

3. Designation of the cardholder as a patient or caregiver;

4. A unique identification number for the patient or caregiver which is matched to the identification number used for such person in the department's compassionate use registry. A caregiver's identification number and file in the compassionate use registry must be linked to the file of the patient or patients the caregiver is assisting so that the caregiver's status may be verified for each patient individually;

5. The expiration date, which shall be 1 year after the date of issuance of the identification card or the date treatment ends as provided in the patient's physician certification, whichever occurs first; and

6. For caregivers who are assisting three or fewer qualifying patients, the names and identification number of the qualifying patient or patients that the caregiver is assisting.

(c) As soon as practicable after the effective date of this act, update its records by registering each dispensing organization approved pursuant to chapter 2014-157, Laws of Florida, or chapter 2016-123, Laws of Florida, as an MMTC with an effective registration date that coincides with that dispensing organization's date of approval as a dispensing organization. On the effective date of this act, all dispensing organizations approved pursuant to chapter 2014-157, Laws of Florida, or chapter 2016-123, Laws of Florida, are deemed to be registered MMTCs. The department may not require a dispensing organization approved pursuant to chapter 2014-157, Laws of Florida, or chapter 2016-123, Laws of Florida, to submit an application and may not charge the dispensing organization an application or registration fee for the initial registration of that dispensing organization as an MMTC pursuant to this

section. For purposes of the requirement that an MMTC comply with the representations made in its application pursuant to subsection (8), an MMTC registered pursuant to this paragraph shall continue to comply with the representations made in its application for approval as a dispensing organization, including any revision authorized by the department before the effective date of this act. After the effective date of this act, the department may grant variances from the representations made in a dispensing organization's application for approval pursuant to subsection (8). For purposes of the definition of the term "marijuana" in s. 29, of Art. X of the State Constitution, an MMTC is deemed to be a dispensing organization as that term is defined in former s. 381.986(1)(a), Florida Statutes 2014 ~~Authorize the establishment of five dispensing organizations to ensure reasonable statewide accessibility and availability as necessary for patients registered in the compassionate use registry and who are ordered low-THC cannabis, medical cannabis, or a cannabis delivery device under this section, one in each of the following regions: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida~~.

(d) By October 3, 2017, register five additional MMTCs with at least one of the MMTCs being an applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association.

(e) Within 6 months after each instance of the registration of 75,000 qualifying patients with the compassionate use registry, register four additional MMTCs if a sufficient number

of MMTC applicants meet the registration requirements established in this section and by department rule.

(f) Not issue more than one registration as an MMTC to a person or an entity.

(g) ~~The department shall~~ Develop an application form for registration as an MMTC and impose an initial application and biennial renewal fee that is sufficient to cover the costs of administering this section. To be registered as an MMTC, the ~~an~~ applicant ~~for approval as a dispensing organization~~ must be able to demonstrate:

1. That the applicant has been registered to do business in this state for the previous 5 consecutive years before submitting the application.

2.~~1.~~ The technical and technological ability to cultivate and produce low-THC cannabis and marijuana. ~~The applicant must possess a valid certificate of registration issued by the Department of Agriculture and Consumer Services pursuant to s. 581.131 that is issued for the cultivation of more than 400,000 plants, be operated by a nurseryman as defined in s. 581.011, and have been operated as a registered nursery in this state for at least 30 continuous years.~~

3.~~2.~~ The ability to secure the premises, resources, and personnel necessary to operate as an MMTC ~~a dispensing organization~~.

4.~~3.~~ The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances.

5.~~4.~~ An infrastructure reasonably located to dispense low-

THC cannabis and marijuana to registered qualifying patients statewide ~~or regionally as determined by the department~~.

6.~~5.~~ The financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financials to the department. Upon approval, the applicant must post a $5 million performance bond. However, upon an MMTC ~~a dispensing organization's~~ serving at least 1,000 qualifying ~~qualified~~ patients, the MMTC ~~dispensing organization~~ is only required to maintain a $2 million performance bond.

7.~~6.~~ That all owners and managers have been fingerprinted and have successfully passed a level 2 background screening pursuant to s. 435.04.

8.~~7.~~ The employment of a medical director to supervise the activities of the MMTC ~~dispensing organization~~.

~~(c) Upon the registration of 250,000 active qualified patients in the compassionate use registry, approve three dispensing organizations, including, but not limited to, an applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association, which must meet the requirements of subparagraphs (b)2.-7. and demonstrate the technical and technological ability to cultivate and produce low-THC cannabis.~~

(h)~~(d)~~ Allow an MMTC ~~a dispensing organization~~ to make a wholesale purchase of marijuana ~~low-THC cannabis or medical cannabis~~ from, or a distribution of marijuana ~~low-THC cannabis or medical cannabis~~ to, another MMTC ~~dispensing organization~~.

(i)~~(e)~~ Monitor physician registration in the compassionate

use registry and the issuance of physician certifications pursuant to subsection (3) ~~ordering of low-THC cannabis, medical cannabis, or a cannabis delivery device~~ for ~~ordering~~ practices that could facilitate unlawful diversion or misuse of marijuana ~~low-THC cannabis, medical cannabis,~~ or ~~a~~ cannabis delivery devices ~~device~~ and take disciplinary action as indicated.

(8)~~(6)~~ MEDICAL MARIJUANA TREATMENT CENTERS ~~DISPENSING ORGANIZATION~~.~~—~~Each MMTC must register with the department. A registered MMTC ~~An approved dispensing organization~~ must, at all times, maintain compliance with paragraph (7)(g), ~~the criteria demonstrated for selection and approval as a dispensing organization under subsection(5) and~~ the criteria required in this subsection, and all representations made to the department in the MMTC's application for registration. Upon request, the department may grant an MMTC one or more variances from the representations made in the MMTC's application. Consideration of such a variance shall be based upon the individual facts and circumstances surrounding the request. A variance may not be granted unless the requesting MMTC can demonstrate to the department that it has a proposed alternative to the specific representation made in its application which fulfills the same or a similar purpose as the specific representation in a way that the department can reasonably determine will not be a lower standard than the specific representation in the application.

(a) When growing marijuana ~~low-THC cannabis or medical cannabis~~, an MMTC ~~a dispensing organization~~:

1. May use pesticides determined by the department, after consultation with the Department of Agriculture and Consumer Services, to be safely applied to plants intended for human

consumption, but may not use pesticides designated as restricted-use pesticides pursuant to s. 487.042.

2. Must grow marijuana ~~low-THC cannabis or medical cannabis~~ within an enclosed structure and in a room separate from any other plant.

3. Must inspect seeds and growing plants for plant pests that endanger or threaten the horticultural and agricultural interests of the state, notify the Department of Agriculture and Consumer Services within 10 calendar days after a determination that a plant is infested or infected by such plant pest, and implement and maintain phytosanitary policies and procedures.

4. Must perform fumigation or treatment of plants, or the removal and destruction of infested or infected plants, in accordance with chapter 581 and any rules adopted thereunder.

(b) When processing marijuana ~~low-THC cannabis or medical cannabis~~, an MMTC ~~a dispensing organization~~ must:

1. Process the marijuana ~~low-THC cannabis or medical cannabis~~ within an enclosed structure and in a room separate from other plants or products.

2. Have the marijuana tested by an independent testing laboratory to ensure it meets the standards established by the department's quality control program ~~Test the processed low-THC cannabis and medical cannabis~~ before it is ~~they are~~ dispensed. ~~Results must be verified and signed by two dispensing organization employees. Before dispensing low-THC cannabis, the dispensing organization must determine that the test results indicate that the low-THC cannabis meets the definition of low-THC cannabis and, for medical cannabis and low-THC cannabis, that all medical cannabis and low-THC cannabis is safe for human~~

~~consumption and free from contaminants that are unsafe for human consumption. The dispensing organization must retain records of all testing and samples of each homogenous batch of cannabis and low-THC cannabis for at least 9 months. The dispensing organization must contract with an independent testing laboratory to perform audits on the dispensing organization's standard operating procedures, testing records, and samples and provide the results to the department to confirm that the low-THC cannabis or medical cannabis meets the requirements of this section and that the medical cannabis and low-THC cannabis is safe for human consumption.~~

3. Package the marijuana ~~low-THC cannabis or medical cannabis~~ in compliance with the United States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.

4. Package the marijuana ~~low-THC cannabis or medical cannabis~~ in a childproof receptacle that has a firmly affixed and legible label stating the following information:

a. A statement that the marijuana ~~low-THC cannabis or medical cannabis~~ meets the requirements of subparagraph 2.;

b. The name of the MMTC ~~dispensing organization~~ from which the marijuana ~~medical cannabis or low-THC cannabis~~ originates; ~~and~~

c. The batch number and harvest number from which the marijuana ~~medical cannabis or low-THC cannabis~~ originates; and

d. The concentration of tetrahydrocannabinol and cannabidiol in the product.

e. Any other information required by department rule

~~5. Reserve two processed samples from each batch and retain such samples for at least 9 months for the purpose of testing~~

~~pursuant to the audit required under subparagraph 2~~.

(c) When dispensing marijuana ~~low-THC cannabis, medical cannabis,~~ or a marijuana ~~cannabis~~ delivery device, an MMTC ~~a dispensing organization~~:

1. May not dispense more than the ~~a 45-day~~ supply of marijuana authorized by a qualifying patient's physician certification ~~low-THC cannabis or medical cannabis~~ to a qualifying patient or caregiver ~~the patient's legal representative~~.

2. Must ensure that the ~~have the dispensing organization's~~ employee who dispenses the marijuana ~~low-THC cannabis, medical cannabis,~~ or marijuana ~~a cannabis~~ delivery device enters ~~enter~~ into the compassionate use registry his or her name or unique employee identifier.

3. Must verify that the qualifying patient and the caregiver, if applicable, both have an active and valid compassionate use registry identification card and that the amount and type of marijuana dispensed match the physician certification in the compassionate use registry for that qualifying patient ~~that a physician has ordered the low-THC cannabis, medical cannabis, or a specific type of a cannabis delivery device for the patient~~.

4. Must label the marijuana with the recommended dose for the qualifying patient receiving the marijuana.

5.~~4.~~ May not dispense or sell any other type of marijuana ~~cannabis~~, alcohol, or illicit drug-related product, including pipes, bongs, or wrapping papers, other than a ~~physician-ordered~~ cannabis delivery device required for the medical use of marijuana which is specified in a physician certification ~~low-~~

~~THC cannabis or medical cannabis, while dispensing low-THC cannabis or medical cannabis~~. An MMTC may produce and dispense marijuana as an edible or food product but may not produce such items in a format designed to be attractive to children. In addition to the requirements of this section and department rule, food products produced by an MMTC must meet all food safety standards established in state and federal law, including, but not limited to, the identification of the serving size and the amount of tetrahydrocannabinol in each serving.

~~5. Must verify that the patient has an active registration in the compassionate use registry, the patient or patient's legal representative holds a valid and active registration card, the order presented matches the order contents as recorded in the registry, and the order has not already been filled.~~

6. Must, upon dispensing the marijuana ~~low-THC cannabis, medical cannabis,~~ or marijuana ~~cannabis~~ delivery device, record in the registry the date, time, quantity, and form of marijuana ~~low-THC cannabis or medical cannabis~~ dispensed; ~~and~~ the type of marijuana ~~cannabis~~ delivery device dispensed; and the name and compassionate use registry identification number of the qualifying patient or caregiver to whom the marijuana delivery device was dispensed.

(d) To ensure the safety and security of its premises and any off-site storage facilities, and to maintain adequate controls against the diversion, theft, and loss of marijuana ~~low-THC cannabis, medical cannabis,~~ or marijuana ~~cannabis~~ delivery devices, an MMTC ~~a dispensing organization~~ shall:

1.a. Maintain a fully operational security alarm system that secures all entry points and perimeter windows and is

equipped with motion detectors; pressure switches; and duress, panic, and hold-up alarms; or

b. Maintain a video surveillance system that records continuously 24 hours each day and meets at least one of the following criteria:

(I) Cameras are fixed in a place that allows for the clear identification of persons and activities in controlled areas of the premises. Controlled areas include grow rooms, processing rooms, storage rooms, disposal rooms or areas, and point-of-sale rooms;

(II) Cameras are fixed in entrances and exits to the premises, which shall record from both indoor and outdoor, or ingress and egress, vantage points;

(III) Recorded images must clearly and accurately display the time and date; or

(IV) Retain video surveillance recordings for a minimum of 45 days, or longer upon the request of a law enforcement agency.

2. Ensure that the MMTC's ~~organization's~~ outdoor premises have sufficient lighting from dusk until dawn.

3. Implement ~~Establish and maintain~~ a tracking system using a vendor approved by the department which ~~that~~ traces the marijuana ~~low-THC cannabis or medical cannabis~~ from seed to sale. The tracking system must ~~shall~~ include notification of key events as determined by the department, including when cannabis seeds are planted, when cannabis plants are harvested and destroyed, and when marijuana ~~low-THC cannabis or medical cannabis~~ is transported, sold, stolen, diverted, or lost.

4. Not dispense from its premises marijuana ~~low-THC cannabis, medical cannabis,~~ or a cannabis delivery device

between the hours of 9 p.m. and 7 a.m., but may perform all other operations and deliver marijuana ~~low-THC cannabis and medical cannabis~~ to qualifying ~~qualified~~ patients 24 hours each day.

5. Store marijuana ~~low-THC cannabis or medical cannabis~~ in a secured, locked room or a vault.

6. Require at least two of its employees, or two employees of a security agency with whom it contracts, to be on the premises at all times.

7. Require each employee or contractor to wear a photo identification badge at all times while on the premises.

8. Require each visitor to wear a visitor's pass at all times while on the premises.

9. Implement an alcohol and drug-free workplace policy.

10. Report to local law enforcement within 24 hours after it is notified or becomes aware of the theft, diversion, or loss of marijuana ~~low-THC cannabis or medical cannabis~~.

(e) To ensure the safe transport of marijuana ~~low-THC cannabis or medical cannabis~~ to MMTC ~~dispensing organization~~ facilities, independent testing laboratories, or qualifying patients, the MMTC ~~dispensing organization~~ must:

1. Maintain a transportation manifest, which must be retained for at least 1 year. A copy of the manifest must be in the vehicle at all times when transporting marijuana.

2. Ensure only vehicles in good working order are used to transport marijuana ~~low-THC cannabis or medical cannabis~~.

3. Lock marijuana ~~low-THC cannabis or medical cannabis~~ in a separate compartment or container within the vehicle.

4. Require at least two persons to be in a vehicle

transporting marijuana ~~low-THC cannabis or medical cannabis~~, and require at least one person to remain in the vehicle while the marijuana ~~low-THC cannabis or medical cannabis~~ is being delivered.

5. Provide specific safety and security training to employees transporting or delivering marijuana ~~low-THC cannabis or medical cannabis~~.

(9) MARIJUANA QUALITY CONTROL PROGRAM AND INDEPENDENT TESTING LABORATORY LICENSURE.—

(a) The department shall establish a quality control program requiring marijuana to be tested by an independent testing laboratory for potency and contaminants before sale to qualifying patients and caregivers.

1. The quality control program must require MMTCs to submit samples from each batch or lot of marijuana harvested or processed to an independent testing laboratory for testing to ensure, at a minimum, that the labeling of the potency of tetrahydrocannabinol and all other marketed cannabinoids or terpenes is accurate and that the marijuana dispensed to qualifying patients is safe for human consumption.

2. An MMTC must maintain records of all tests conducted, including the results of each test and any additional information, as required by the department.

3. The department shall adopt all rules necessary to create and oversee the quality control program, which must include, at a minimum:

a. Permissible levels of variation in potency labeling and standards requiring tetrahydrocannabinol in edible marijuana products to be distributed consistently throughout the product;

b. Permissible levels of contaminants and mandatory testing for contaminants to confirm that the tested marijuana is safe for human consumption. This testing must include, but is not limited to, testing for microbiological impurity, residual solvents, and pesticide residues;

c. The destruction of marijuana determined to be inaccurately labeled or unsafe for human consumption after the MMTC has an opportunity to take remedial action;

d. The collection, storage, handling, recording, and destruction of samples of marijuana by independent testing laboratories; and

e. Security, inventory tracking, and record retention.

(b) The department must license all independent testing laboratories to ensure that all marijuana is tested for potency and contaminants in accordance with the department's quality control program. An independent testing laboratory may collect and accept samples of, and possess, store, transport, and test marijuana. An independent testing laboratory may not be owned by a person who also possesses an ownership interest in an MMTC. A clinical laboratory that is licensed by the Agency for Health Care Administration pursuant to part I of chapter 483 and that performs nonwaived clinical tests is exempt from the requirement to be licensed by the department pursuant to this paragraph but must be certified to perform all required tests pursuant to subparagraph 2.

1. The department shall develop rules establishing independent testing laboratory license requirements and a process for licensing independent testing laboratories; develop an application form for an independent testing laboratory

license; and impose an initial application fee and a biennial renewal fee sufficient to cover the costs of administering this subsection.

2. In addition to licensure, an independent testing laboratory must be certified to perform all required tests by the department. The department must issue a certification to an independent testing laboratory that has been certified by a third-party laboratory certification body approved by the department. The department shall establish reasonable rules for the certification and operation of independent testing laboratories. Rules for certification must, at a minimum, address standards relating to:

a. Personnel qualifications;

b. Equipment and methodology;

c. Proficiency testing;

d. Tracking;

e. Sampling;

f. Chain of custody;

g. Record and sample retention;

h. Reporting;

i. Audit and inspection; and

j. Security.

3. The department shall suspend or reduce any mandatory testing requirement specified in its quality control program if the number of licensed and certified independent testing laboratories is insufficient to process the tests necessary to meet the patients' demand for marijuana.

4. An independent testing laboratory may accept only samples composed of marijuana which are obtained from a sample

source approved by the department. At a minimum, these sources must include an MMTC, a researcher affiliated with an accredited university or research hospital, a qualifying patient, and a caregiver.

(10) ~~(7)~~ DEPARTMENT AUTHORITY AND RESPONSIBILITIES.—

(a) The department may conduct announced or unannounced inspections of MMTCs ~~dispensing organizations~~ to determine compliance with this section or rules adopted pursuant to this section.

(b) The department shall inspect an MMTC ~~a dispensing organization~~ upon complaint or notice provided to the department that the MMTC ~~dispensing organization~~ has dispensed marijuana ~~low-THC cannabis or medical cannabis~~ containing any mold, bacteria, or other contaminant that may cause or has caused an adverse effect to human health or the environment.

(c) The department shall conduct at least a biennial inspection of each MMTC ~~dispensing organization~~ to evaluate the MMTC's ~~dispensing organization's~~ records, personnel, equipment, processes, security measures, sanitation practices, and quality assurance practices.

(d) The department shall adopt by rule a process for approving changes in MMTC ownership or a change in an MMTC owner's investment interest. This process must include specific criteria for the approval or denial of an application for change of ownership or a change in investment interest and procedures for screening applicants' criminal and financial histories.

(e) The department shall establish, maintain, and control a computer software tracking system that traces marijuana from seed to sale and allows real-time, 24-hour access by the

department to data from all MMTCs and independent testing laboratories. The tracking system must, at a minimum, include notification of when marijuana seeds are planted, when marijuana plants are harvested and destroyed, and when marijuana is transported, sold, stolen, diverted, or lost. Each MMTC shall use the seed-to-sale tracking system selected by the department.

(f) ~~(d)~~ The department may enter into interagency agreements with the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of Transportation, the Department of Highway Safety and Motor Vehicles, and the Agency for Health Care Administration, and such agencies are authorized to enter into an interagency agreement with the department, to conduct inspections or perform other responsibilities assigned to the department under this section.

(g) ~~(e)~~ The department must make a list of all approved MMTCs, ~~dispensing organizations and qualified ordering~~ physicians who are qualified to issue physician certifications, and medical directors publicly available on its website.

~~(f) The department may establish a system for issuing and renewing registration cards for patients and their legal representatives, establish the circumstances under which the cards may be revoked by or must be returned to the department, and establish fees to implement such system. The department must require, at a minimum, the registration cards to:~~

~~1. Provide the name, address, and date of birth of the patient or legal representative.~~

~~2. Have a full-face, passport-type, color photograph of the patient or legal representative taken within the 90 days~~

~~immediately preceding registration.~~

~~3. Identify whether the cardholder is a patient or legal representative.~~

~~4. List a unique numeric identifier for the patient or legal representative that is matched to the identifier used for such person in the department's compassionate use registry.~~

~~5. Provide the expiration date, which shall be 1 year after the date of the physician's initial order of low-THC cannabis or medical cannabis.~~

~~6. For the legal representative, provide the name and unique numeric identifier of the patient that the legal representative is assisting.~~

~~7. Be resistant to counterfeiting or tampering.~~

(h) ~~(g)~~ The department may impose reasonable fines not to exceed $10,000 on an MMTC ~~a dispensing organization~~ for any of the following violations:

1. Violating this section, s. 499.0295, or department rule.

2. Failing to maintain qualifications for registration with the department ~~approval~~.

3. Endangering the health, safety, or security of a qualifying ~~qualified~~ patient.

4. Improperly disclosing personal and confidential information of a qualifying ~~the qualified~~ patient.

5. Attempting to procure MMTC registration with the department ~~dispensing organization approval~~ by bribery, fraudulent misrepresentation, or extortion.

6. Any owner or manager of the MMTC being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction

which directly relates to the business of an MMTC ~~a dispensing organization~~.

7. Making or filing a report or record that the MMTC ~~dispensing organization~~ knows to be false.

8. Willfully failing to maintain a record required by this section or department rule.

9. Willfully impeding or obstructing an employee or agent of the department in the furtherance of his or her official duties.

10. Engaging in fraud or deceit, negligence, incompetence, or misconduct in the business practices of an MMTC ~~a dispensing organization~~.

11. Making misleading, deceptive, or fraudulent representations in or related to the business practices of an MMTC ~~a dispensing organization~~.

12. Having a license or the authority to engage in any regulated profession, occupation, or business that is related to the business practices of an MMTC ~~a dispensing organization~~ suspended, revoked, or otherwise acted against by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law.

13. Violating a lawful order of the department or an agency of the state, or failing to comply with a lawfully issued subpoena of the department or an agency of the state.

(i) ~~(h)~~ The department may suspend, revoke, or refuse to renew an MMTC's registration with the department ~~a dispensing organization's approval~~ if the MMTC ~~a dispensing organization~~ commits a violation specified ~~any of the violations~~ in paragraph

(h) ~~(g)~~.

(j)~~(i)~~ The department shall renew an MMTC's registration with the department ~~the approval of a dispensing organization~~ biennially if the MMTC ~~dispensing organization~~ meets the requirements of this section and pays the biennial renewal fee.

(k)~~(j)~~ The department may adopt rules necessary to implement this section.

(11)~~(8)~~ PREEMPTION.—

(a) All matters regarding the regulation of the cultivation and processing of marijuana ~~medical cannabis or low-THC cannabis~~ by MMTCs ~~dispensing organizations~~ are preempted to the state.

(b) A municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of MMTCs ~~dispensing organizations~~ located within its municipal boundaries. A county may determine by ordinance the criteria for the number, location, and other permitting requirements that do not conflict with state law or department rule for all dispensing facilities of MMTCs ~~dispensing organizations~~ located within the unincorporated areas of that county.

(12)~~(9)~~ EXCEPTIONS TO OTHER LAWS.—

(a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, a qualifying ~~qualified~~ patient, or a caregiver who has obtained a valid compassionate use registry identification card from the department, ~~and the qualified patient's legal representative~~ may purchase from an MMTC, and possess for the qualifying patient's medical use, up to the amount of marijuana

in the physician certification ~~low-THC cannabis or medical cannabis ordered for the patient~~, but not more than a 90-day ~~45-day~~ supply, and a cannabis delivery device specified in the physician certification ~~ordered~~ for the qualifying patient.

(b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an MMTC ~~an approved dispensing organization~~ and its owners, managers, contractors, and employees may manufacture, possess, sell, deliver, distribute, dispense, administer, and lawfully dispose of reasonable quantities, as established by department rule, of marijuana ~~low-THC cannabis, medical cannabis,~~ or a cannabis delivery device. For purposes of this subsection, the terms "manufacture," "possession," "deliver," "distribute," and "dispense" have the same meanings as provided in s. 893.02.

(c) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an approved independent testing laboratory may possess, test, transport, and lawfully dispose of marijuana ~~low-THC cannabis or medical cannabis~~ as provided by department rule.

(d) An MMTC ~~approved dispensing organization~~ and its owners, managers, contractors, and employees are not subject to licensure or regulation under chapter 465 or chapter 499 for manufacturing, possessing, selling, delivering, distributing, dispensing, or lawfully disposing of reasonable quantities, as established by department rule, of marijuana ~~low-THC cannabis, medical cannabis,~~ or a cannabis delivery device.

(e) Exercise by an MMTC of ~~An approved dispensing organization that continues to meet the requirements for~~

~~approval is presumed to be registered with the department and to meet the regulations adopted by the department or its successor agency for the purpose of dispensing medical cannabis or low-THC cannabis under Florida law. Additionally,~~ the authority provided to MMTCs ~~a dispensing organization~~ in s. 499.0295 does not impair its registration with the department ~~the approval of a dispensing organization~~.

(f) This subsection does not exempt a person from prosecution for a criminal offense related to impairment or intoxication resulting from the medical use of marijuana ~~low-THC cannabis or medical cannabis~~ or relieve a person from any requirement under law to submit to a breath, blood, urine, or other test to detect the presence of a controlled substance.

(g) This section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or substance abuse policy. Notwithstanding any other provision of law, this section does not require an employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana. Notwithstanding any other provision of law, this section does not create a cause of action against an employer for wrongful discharge or discrimination.

(h) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, a research institute established by a public postsecondary educational institution, such as the H. Lee Moffitt Cancer Center and Research Institute established under s. 1004.43, or a state university that has achieved the preeminent state research university designation pursuant to s.

1001.7065 may possess, test, transport, and lawfully dispose of marijuana for research purposes as provided by department rule.

(13) RULEMAKING.—

(a) The department and the applicable boards shall adopt emergency rules pursuant to s. 120.54(4) and this subsection necessary to implement this section. If an emergency rule adopted under this subsection is held to be unconstitutional or an invalid exercise of delegated legislative authority and becomes void, the department and the applicable boards may adopt an emergency rule to replace the rule that has become void. If the emergency rule adopted to replace the void emergency rule is also held to be unconstitutional or an invalid exercise of delegated legislative authority and becomes void, the department and the applicable boards must follow the nonemergency rulemaking procedures of the Administrative Procedures Act to replace the rule that has become void.

(b) For emergency rules adopted under this subsection, the department and the applicable boards need not make the findings required by s. 120.54(4)(a). Emergency rules adopted under this subsection are exempt from ss. 120.54(3)(b) and 120.541. The department and the applicable boards shall meet the procedural requirements in s. 120.54(2)(a) if the department or the applicable boards have, before the effective date of this act, held any public workshops or hearings on the subject matter of emergency rules adopted under this subsection. Challenges to emergency rules adopted under this subsection are subject to the time schedules provided in s. 120.56(5).

(c) Emergency rules adopted under this section are exempt from s. 120.54(4)(c) and shall remain in effect until replaced

by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedures Act. By January 1, 2018, the department and the applicable boards shall initiate nonemergency rulemaking pursuant to the Administrative Procedures Act by publishing a notice of rule development in the Florida Administrative Register. Except as provided in paragraph (a), after January 1, 2018, the department and applicable boards may not adopt rules pursuant to the emergency rulemaking procedures provided in this subsection.

Section 2. Section 1004.4351, Florida Statutes, is created to read:

1004.4351 Medical marijuana research and education.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Medical Marijuana Research and Education Act."

(2) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) The present state of knowledge concerning the use of marijuana to alleviate pain and treat illnesses is limited because permission to perform clinical studies on marijuana is difficult to obtain, with access to research-grade marijuana so restricted that little or no unbiased studies have been performed.

(b) Under the State Constitution, marijuana is available for the treatment of certain debilitating medical conditions.

(c) Additional clinical studies are needed to ensure that the residents of this state obtain the correct dosing, formulation, route, modality, frequency, quantity, and quality of marijuana for specific illnesses.

(d) An effective medical marijuana research and education program would mobilize the scientific, educational, and medical

resources that presently exist in this state to determine the appropriate and best use of marijuana to treat illness.

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

(a) "Board" means the Medical Marijuana Research and Education Board.

(b) "Coalition" means the Coalition for Medical Marijuana Research and Education.

(c) "Marijuana"" has the same meaning as provided in s. 29, Art. X of the State Constitution.

(4) COALITION FOR MEDICAL MARIJUANA RESEARCH AND EDUCATION.—

(a) There is established within the H. Lee Moffitt Cancer Center and Research Institute, Inc., the Coalition for Medical Marijuana Research and Education. The purpose of the coalition is to conduct rigorous scientific research, provide education, disseminate research, and guide policy for the adoption of a statewide policy on ordering and dosing practices for the medicinal use of marijuana. The coalition shall be physically located at the H. Lee Moffitt Cancer Center and Research Institute, Inc.

(b) The Medical Marijuana Research and Education Board is established to direct the operations of the coalition. The board shall be composed of seven members appointed by the chief executive officer of the H. Lee Moffitt Cancer Center and Research Institute, Inc. Board members must have experience in a variety of scientific and medical fields, including, but not limited to, oncology, neurology, psychology, pediatrics, nutrition, and addiction. Members shall be appointed to 4-year terms and may be reappointed to serve additional terms. The

chair shall be elected by the board from among its members to serve a 2-year term. The board shall meet no less than semiannually, at the call of the chair or, in his or her absence or incapacity, the vice chair. Four members constitute a quorum. A majority vote of the members present is required for all actions of the board. The board may prescribe, amend, and repeal a charter governing the manner in which it conducts its business. A board member shall serve without compensation but is entitled to be reimbursed for travel expenses by the coalition or the organization he or she represents in accordance with s. 112.061.

(c) The coalition shall be administered by a coalition director, who shall be appointed by and serve at the pleasure of the board. The coalition director shall, subject to the approval of the board:

1. Propose a budget for the coalition.

2. Foster the collaboration of scientists, researchers, and other appropriate personnel in accordance with the coalition's charter.

3. Identify and prioritize the research to be conducted by the coalition.

4. Prepare the Medical Marijuana Research and Education Plan for submission to the board.

5. Apply for grants to obtain funding for research conducted by the coalition.

6. Perform other duties as determined by the board.

(d) The board shall advise the Board of Governors, the State Surgeon General, the Governor, and the Legislature with respect to medical marijuana research and education in this

state. The board shall explore methods of implementing and enforcing medical marijuana laws in relation to cancer control, research, treatment, and education.

(e) The board shall annually adopt a plan for medical marijuana research, known as the "Medical Marijuana Research and Education Plan," which must be in accordance with state law and coordinate with existing programs in this state. The plan must include recommendations for the coordination and integration of medical, nursing, paramedical, community, and other resources connected with the treatment of debilitating medical conditions, research related to the treatment of such medical conditions, and education.

(f) By February 15 of each year, the board shall issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on research projects, community outreach initiatives, and future plans for the coalition.

(5) RESPONSIBILITIES OF THE H. LEE MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, INC.—The H. Lee Moffitt Cancer Center and Research Institute, Inc., shall allocate staff and provide information and assistance, as the coalition's budget permits, to assist the board in fulfilling its responsibilities.

Section 3. Paragraph (b) of subsection (3) of section 381.987, Florida Statutes, is amended to read:

381.987 Public records exemption for personal identifying information in the compassionate use registry.—

(3) The department shall allow access to the registry, including access to confidential and exempt information, to:

(b) A medical marijuana treatment center registered with

~~dispensing organization approved by~~ the department pursuant to s. 381.986 which is attempting to verify the authenticity of a physician certification ~~physician's order~~ for marijuana ~~low-THC cannabis~~, including whether the physician certification ~~order~~ had been previously filled and whether the physician certification ~~order~~ was written for the person attempting to have it filled.

Section 4. Subsection (1) of section 385.211, Florida Statutes, is amended to read:

385.211 Refractory and intractable epilepsy treatment and research at recognized medical centers.—

(1) As used in this section, the term "low-THC cannabis" means "low-THC cannabis" as defined in s. 381.986 which ~~that~~ is dispensed only from a medical marijuana treatment center ~~dispensing organization~~ as defined in s. 381.986.

Section 5. Present paragraphs (b) and (c) of subsection (2) of section 499.0295, Florida Statutes, are redesignated as paragraphs (a) and (b), respectively, present paragraphs (a) and (c) of that subsection are amended, a new paragraph (c) is added to that subsection, and subsection (3) of that section is amended, to read:

499.0295 Experimental treatments for terminal conditions.—

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

~~(a) "Dispensing organization" means an organization approved by the Department of Health under s. 381.986(5) to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices.~~

(b) ~~(c)~~ "Investigational drug, biological product, or device" means:

1. A drug, biological product, or device that has successfully completed phase 1 of a clinical trial but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration; or

2. Marijuana ~~Medical cannabis~~ that is manufactured and sold by an MMTC ~~a dispensing organization~~.

(c) "Medical marijuana treatment center" or "MMTC" means an organization registered with the Department of Health under s. 381.986.

(3) Upon the request of an eligible patient, a manufacturer may, or upon the issuance of a physician certification ~~a physician's order~~ pursuant to s. 381.986, an MMTC ~~a dispensing organization~~ may:

(a) Make its investigational drug, biological product, or device available under this section.

(b) Provide an investigational drug, biological product, device, or cannabis delivery device as defined in s. 381.986 to an eligible patient without receiving compensation.

(c) Require an eligible patient to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product, device, or cannabis delivery device as defined in s. 381.986.

Section 6. Subsection (1) of section 1004.441, Florida Statutes, is amended to read:

1004.441 Refractory and intractable epilepsy treatment and research.—

(1) As used in this section, the term "low-THC cannabis"

means "low-THC cannabis" as defined in s. 381.986 which ~~that~~ is dispensed only from a medical marijuana treatment center ~~dispensing organization~~ as defined in s. 381.986.

Section 7. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 8. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 19, 2017

I respectfully request that **Senate Bill # 406: Compassionate Use of Low-THC Cannabis and Marijuana and Senate Bill # 1844: Public Records/Compassionate Use Registry**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Rob Bradley
Florida Senate, District 5

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

406
Bill Number (if applicable)

Meeting Date

427690
Amendment Barcode (if applicable)

Topic Compassionate Use Amendment

Name Roz McCarthy

Job Title President

Address 1335 Broken Oak Drive
Street

Orlando FL 32787
City State Zip

Phone 4078791302

Email RDZsmith69@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Minorities for Medical Marijuana

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)

04/25/17
Meeting Date

406
Bill Number (if applicable)

225574
Amendment Barcode (if applicable)

Topic Cannabis

Name John Hightower

Job Title paralegal

Address 2807 Sweetbriar Drive
Street

Phone 8505190363

Tallahassee FL 32312
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Patients

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)

4/25/17
Meeting Date

4406
Bill Number (if applicable)

308518
Amendment Barcode (if applicable)

Topic Compassionate Use Amendment

Name Roz McCarthy

Job Title President

Address 1335 Broken Oak Dr
Street

Phone 4078491302

Orlando FL 34787
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Minorities for Medical Marijuana

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)

4/25/17
Meeting Date

406
Bill Number (if applicable)

368518
Amendment Barcode (if applicable)

Topic Medical Marijuana

Name Ben Pollara

Job Title Executive Director

Address 801 Arthur Godfrey Rd, Suite 704A
Street

Phone 305-989-4901

Miami Beach FL 33140
City *State* *Zip*

Email Ben@floridaforcare.org

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

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

Representing Florida for Care

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

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

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

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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)

4/25/17
Meeting Date

406
Bill Number (if applicable)

900914
Amendment Barcode (if applicable)

Topic Compassionate Care Amendment

Name Roz McCarthy

Job Title President

Address 1335 Broken Oak Dr.
Street

Orlando FL 32837
City *State* *Zip*

Phone 4078791302

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-25-2017 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 406

Meeting Date *Bill Number (if applicable)*

Topic SB 406 *Amendment Barcode (if applicable)*

Name Alexander Golden

Job Title Consultant

Address 11050 Wildlife Trl. Phone

Street

Tallahassee FL 32312 Email

City *State* *Zip*

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

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

Representing Thornton and Thornton Pharms

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)

25 Apr 17
Meeting Date

406
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Medical Marijuana

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall 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 Fla. Smart Justice Alliance

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)

April 25, 2017
Meeting Date

406
Bill Number (if applicable)

Topic Compassionate Use of Low-THC Cannabis and Marijuana

Amendment Barcode (if applicable)

Name Chief Jeffrey Chudnow

Job Title Chief of Police

Address 2636 Mitcham Drive
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-219-3631

Email bhoward@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

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)

4/25/17
Meeting Date

406
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Medical Marijuana

Name Ron Watson

Job Title Lobbyist

Address 3738 Mundon Way
Street
Tallahassee FL 32309
City *State* *Zip*

Phone 850 567-1202

Email watson.strategies@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AltMed, Cannavision + SLGT Inc.

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)

04/25/17
Meeting Date

406
Bill Number (if applicable)

248940
Amendment Barcode (if applicable)

Topic Cannabis

Name John Hightower

Job Title paralegal

Address 2807 Sweetbriar Drive
Street

Phone 8505190363

Tallahassee FL 32312
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Patients

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)

04/25/17
Meeting Date

406
Bill Number (if applicable)

504060
Amendment Barcode (if applicable)

Topic Cannabis

Name John Hightower

Job Title paralegal

Address 2807 Sweetbriar Drive
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 8505190363

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Patients

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)

05/25
Meeting Date

4106
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jimmy Johnston

Job Title Weed for Warriors North FL

Address _____ Phone _____
Street

Email gjgwple@gmail.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Weed for Warriors Project North FL Chapter

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)

406

Meeting Date | *Bill Number (if applicable)*

Topic MEDICAL CANNABIS | *Amendment Barcode (if applicable)*

Name GARY STEIN

Job Title

Address 7035 BELT LINK LOOP | Phone (513) 305-8280

Street

WESLEY CHAPEL FL 33545 | Email GSTEINMPW@ME.COM

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing SELF & PATIENTS

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)

04/25	406
Meeting Date	*Bill Number (if applicable)*
	Amendment Barcode (if applicable)

Topic Cannabis

Name JARED BAMBIS

Job Title MASTER CULTIVATOR / CAREGIVER

Address 9991 N. Abiaca Circle Phone (954) 531-9782
Street

Davie FL 33328 Email JARED.BAMBIS@GMAIL.C
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing MYSELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

406
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Medical Marijuana

Name Ben Pollara

Job Title Executive Director

Address 301 Arthur Godfrey Rd, Suite 404A
Street

Miami Beach FL 33140
City *State* *Zip*

Phone 305-[illegible]

Email Ben@floridaforcare.org

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

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

Representing Florida For Care

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

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

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

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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)

4/25/17
Meeting Date

SB406
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic MEDICAL MARIJUANA

Name ROZ McCARTHY

Job Title

Address 1335 BROKEN OAK DR.
Street
ORLANDO FL 34787
City *State* *Zip*

Phone 407-879-1302

Email ROZSMITH69@GMAIL

Speaking: ☑ For ☐ Against ☐ Information

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

Representing MINORITIES FOR MEDICAL MARIJUANA

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)

4/25/17
Meeting Date

406
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Medical Cannabis

Name Louis Rotundo

Job Title

Address 302 Pinestraw Circle
Street

Altamonte Springs 32714
City *State* *Zip*

Phone 407-699-9361

Email LGR5002@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CBSY inc

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

4-25-2016 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 406

Meeting Date *Bill Number (if applicable)*

Topic Medical Marijuana *Amendment Barcode (if applicable)*

Name Michael Bowen

Job Title Director

Address 1008 Paulding Ave Phone 616-422-9736

Street

Pensacola FL 32507 Email BowenSog@Gmail.com

City *State* *Zip*

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

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

Representing Epilepsy Foundation 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)

4-25-2016
Meeting Date

SB 406
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Medical Marijuana

Name Stephani Scruggs Bowen

Job Title

Address 608 Paulding Ave
Street
Pensacola FL 32507
City *State* *Zip*

Phone 850-530-1871

Email Stephani.Scruggs@mutual1.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Epilepsy Foundation

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)

04/25/17
Meeting Date

406
Bill Number (if applicable)

Topic Cannabis

Amendment Barcode (if applicable)

Name John Hightower

Job Title paralegal

Address 2807 Sweetbriar Drive
Street

Phone 8505190363

Tallahassee FL 32312
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Patients

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/25/2017
Meeting Date

Topic _____ Bill Number 406 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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4-25-17
Meeting Date

406
Bill Number (if applicable)

N/A
Amendment Barcode (if applicable)

Topic COMPASSIONATE USE

Name DENNIS DECKERHOFF

Job Title PARENT + PATIENT ADVOCATE

Address 5704 VICTOR BROWN TRAIL
Street

TALL. FL. 32303
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing BARRETT DECKERHOFF + PATIENTS OF FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

406
Bill Number (if applicable)

Topic Medical Marijuana

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address 1169 S. Sinclair Rd
Street

Tallahassee FL 32312
City *State* *Zip*

Phone (850) 284-2090

Email normtallahassee@gmail.com

Speaking: ☑ For ☐ Against ☑ Information

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

Representing NORML Tallahassee

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)

406

Meeting Date | *Bill Number (if applicable)*

Amendment Barcode (if applicable)

Topic Medical Access

Name Jodi James

Job Title Executive Director

Address 1375 Cypress *Street*

Melbourne FL 32935 *City* *State* *Zip*

Phone 3218907302

Email JJames Florida@gmail.

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

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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)

4/25/17
Meeting Date

406
Bill Number (if applicable)

~~832708~~
Amendment Barcode (if applicable)

BC→225574

Topic Medical Marijuana

Name Roz McCarthy

Job Title President

Address 1335 Broken Oak DR
Street

Orlando FL 34781
City *State* *Zip*

Phone 4078791302

Email RozSmith1A@gmail

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Minorities For Medical Marijuana

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/SB 494
INTRODUCER:	Judiciary Committee and Senator Bradley
SUBJECT:	Compensation of Victims of Wrongful Incarceration
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Hrdlicka	CJ	**Favorable**
2.	Brown	Cibula	JU	**Fav/CS**
3.	McAuliffe	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 494 amends chapter 961, Florida Statutes, which establishes an administrative process for compensation for a person who has been wrongfully incarcerated.

Under current law, a person is not eligible for compensation for wrongful incarceration through an administrative process if he or she has a criminal history that includes any felony.[1] This is commonly known as the "clean hands" provision of Florida's wrongful incarceration compensation law. The bill narrows the list of felony offenses that disqualify a person from compensation from all felonies to violent felonies. The bill also removes as a disqualifier any offense for which the person was convicted of or pled guilty or nolo contendere to before he or she was wrongfully convicted and incarcerated. By narrowing the types of disqualifying felonies, the bill expands the pool of potential applicants for compensation through the administrative process.

This bill has an indeterminate fiscal impact because it is unknown how many applicants would be eligible under the expanded criteria.

The bill takes effect October 1, 2017.

[1] Section 961.04, F.S.

II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act has been in effect since July 1, 2008.[2] The law establishes an administrative process for a person to petition the original sentencing court for an order finding the petitioner to have been wrongfully incarcerated and eligible for compensation.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.[3] The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of $50,000 for each year of wrongful incarceration up to a total of $2 million.[4]

"Clean Hands" Provision of the Act – Section 961.04, Florida Statutes

In cases in which sufficient evidence of actual innocence can be shown, the person is still ineligible for compensation if:

- Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense; or
- During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.[5]

Of the 30 states that have statutes that provide for compensation for wrongfully incarcerated persons, Florida is the only state with a "clean hands" provision.[6]

---

[2] Chapter 961, F.S. (ch. 2008-39, L.O.F.).
[3] Section 961.05(2), F.S.
[4] Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any Florida College System Institution as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets and maintains the regular admission requirements; remains registered; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled. The wrongfully incarcerated person is also entitled to reimbursement of the amount of any fine, penalty, or court costs paid, and the amount of any reasonable attorney's fees and expenses incurred for all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon supporting documentation submitted as specified in s. 961.05, F.S.. Finally, the wrongfully incarcerated person is entitled to immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.
[5] Section 961.04, F.S.
[6] *Making Up for Lost Time*, page 19, The Innocence Project, Benjamin N. Cardozo School of Law, www.innocenceproject.org; ("Clean hands" meaning that a person is ineligible for compensation if he or she has prior felony offenses to the one for which compensation is being sought.). Other states generally take these matters up by "personal bills," a process much like Florida's claim bill process.

Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense

A person convicted of a felony may be sentenced to a split sentence, which is a sentence including both incarceration and release under supervision. Alternatively, a person could be granted parole if he or she meets the statutory criteria.[7] Therefore, a person could potentially be wrongfully incarcerated for a crime and then placed on parole or community supervision as part of the sentence. If a person violates a condition of parole or community supervision, he or she may have parole or community supervision revoked. The basis for revocation of parole or community supervision may affect eligibility for compensation for wrongful incarceration.

Under s. 961.06(2), F.S., if a person commits a misdemeanor or a technical violation while under supervision which results in revocation of the community supervision or parole, the person remains eligible for compensation. If, however, a felony law violation results in revocation, the person is no longer eligible for compensation.[8] Ineligibility based on a felony violation applies to any felony.

Wrongful Incarceration Claims

To date, four persons have been compensated under the administrative process for a total of $4,276,901. Six other claimants had their claims denied, based on either ineligibility or incomplete applications.[9]

III. Effect of Proposed Changes:

The bill amends ch. 961, F.S., the Victims of Wrongful Incarceration Compensation Act. Chapter 961, F.S., currently provides an administrative process for a person who has been wrongfully incarcerated for a felony conviction to seek a court order finding the person to be eligible for compensation. Current law disqualifies a person who is otherwise eligible for compensation if he or she has a record of any prior felony, a felony committed while wrongfully incarcerated, or a felony committed while on parole or community supervision.

Section 2 limits disqualifying felonies to violent felonies. In other words, the bill provides that in order to be found ineligible for compensation based on other crimes, the person must have committed a violent felony, not a simple felony. Specifically a felony is disqualifying if:

- During the person's wrongful incarceration, he or she was convicted of, pled nolo contendere to, regardless of adjudication, any violent felony;[10] or

[7] Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines which was October 1, 1983, and only if they meet the statutory criteria. Ch. 82-171, Laws of Florida; s. 947.16, F.S. The term "community supervision" as used in s. 961.06(2), F.S., could include controlled release, conditional medical or conditional release under the authority of the Commission on Offender Review (ch. 947, F.S.) or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

[8] Section 961.06(2), F.S.

[9] Email correspondence with the Office of the Attorney General (Jan. 14, 2016 and March 1, 2017) (on file with the Senate Committee on Judiciary). Persons whose claims have been successful are Leroy McGee (2010), James Bain (2011), Luis Diaz (2012), and James Richardson (2015). Jarvis McBride's claim was denied (2012). Three persons had their claims rejected based on incomplete applications. These are Robert Lewis (2011), Edwin Lampkin (2012), and Robert Glenn Mosley (2014). Two other claimants were determined to be ineligible for compensation (Ricardo Johnson (2013) and Joseph McGowan (2015)).

[10] Section 961.04(2), F.S.

- During a period of parole or community supervision on the sentence that led to his or her wrongful incarceration, the person committed a violent felony that resulted in the revocation of the parole or community supervision.[11]

A violent felony is defined in section 1 by a cross-reference to ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar.

Section 2 also removes as a disqualifying offense any felony for which the person was convicted or pled guilty or nolo contendere to before he or she was wrongfully incarcerated.

Violent felony offenses which would preclude a wrongfully incarcerated person from being eligible for compensation under the bill are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

[11] Section 961.06(2), F.S.

In limiting disqualifying felonies to violent felonies, the pool of potential persons eligible for compensation due to wrongful incarceration may increase.

The bill takes effect 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:

More persons are potentially eligible for compensation under the provisions of the bill. A person who is entitled to compensation based on wrongful incarceration may be paid at the rate of $50,000 per year of wrongful incarceration up to a limit of $2 million.[12] Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

Although statutory limits on compensation under the Act are clear, the fiscal impact of the bill is unquantifiable. The possibility that a person would be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total $4,276,901.

[12] The Chief Financial Officer may adjust the annual rate of compensation for inflation for persons found to be wrongfully incarcerated after December 31, 2008. Section 961.06(1)(a), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.04, and 961.06.

This bill reenacts the following sections of the Florida Statutes: 961.03, 961.05, 961.055, and 961.056.

IX. Additional Information:

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

CS by Judiciary on March 7, 2017:
This CS removes as a disqualifying offense that makes a person ineligible for compensation for a wrongful incarceration any felony for which the person was convicted of or pled nolo contendere to before the person's wrongful conviction and incarceration.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Bradley

590-02191-17 2017494c1

A bill to be entitled

An act relating to compensation of victims of wrongful incarceration; reordering and amending s. 961.02, F.S.; making technical changes; defining the term "violent felony"; amending s. 961.04, F.S.; revising the circumstances under which a wrongfully incarcerated person is not eligible for compensation under the Victims of Wrongful Incarceration Compensation Act; amending s. 961.06, F.S.; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation; reenacting s. 961.03(1)(a), (2), (3), and (4), F.S., relating to determination of status as a wrongfully incarcerated person and of eligibility for compensation, to incorporate the amendment made to s. 961.04, F.S., in references thereto; reenacting ss. 961.05(6), 961.055(1), and 961.056(4), F.S., relating to determination of entitlement to compensation, application for compensation for a wrongfully incarcerated person, and an alternative application for compensation for a wrongfully incarcerated person, respectively, to incorporate the amendment made to s. 961.06, F.S., in references thereto; providing an effective date.

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

Section 1. Section 961.02, Florida Statutes, is reordered and amended to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

(1) "Act" means the Victims of Wrongful Incarceration Compensation Act.

(2) "Department" means the Department of Legal Affairs.

(3) "Division" means the Division of Administrative Hearings.

(7)~~(4)~~ "Wrongfully incarcerated person" means a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and who is the subject of an order issued by the original sentencing court pursuant to s. 961.03~~, with respect to whom pursuant to the requirements of s. 961.03, the original sentencing court has issued its order~~ finding that the person did not commit ~~neither committed~~ the act or ~~nor the~~ offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.

(4)~~(5)~~ "Eligible for compensation" means that a person meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.

(5)~~(6)~~ "Entitled to compensation" means that a person meets the definition of the term "eligible for compensation" and satisfies the application requirements prescribed in s. 961.05, and may receive compensation pursuant to s. 961.06.

(6) "Violent felony" means a felony listed in s. 775.084(1)(c)1. or s. 948.06(8)(c).

Section 2. Section 961.04, Florida Statutes, is amended to read:

961.04 Eligibility for compensation for wrongful incarceration.—A wrongfully incarcerated person is not eligible for compensation under the act if:

~~(1) Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;~~

(1) ~~(2)~~ During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any violent felony ~~offense~~; or

(2) ~~(3)~~ During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.

Section 3. Subsection (2) of section 961.06, Florida Statutes, is amended to read:

961.06 Compensation for wrongful incarceration.—

(2) In calculating monetary compensation under paragraph (1)(a), a wrongfully incarcerated person who is placed on parole or community supervision while serving the sentence resulting from the wrongful conviction and who commits anything less than a violent felony ~~law violation~~ that results in revocation of the parole or community supervision is eligible for compensation for the total number of years incarcerated. A wrongfully incarcerated person who commits a violent felony ~~law violation~~

that results in revocation of the parole or community supervision is ineligible for any compensation under subsection (1).

Section 4. For the purpose of incorporating the amendment made by this act to section 961.04, Florida Statutes, in references thereto, paragraph (a) of subsection (1) and subsections (2), (3), and (4) of section 961.03, Florida Statutes, are reenacted to read:

961.03 Determination of status as a wrongfully incarcerated person; determination of eligibility for compensation.—

(1)(a) In order to meet the definition of a "wrongfully incarcerated person" and "eligible for compensation," upon entry of an order, based upon exonerating evidence, vacating a conviction and sentence, a person must set forth the claim of wrongful incarceration under oath and with particularity by filing a petition with the original sentencing court, with a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person was incarcerated. At a minimum, the petition must:

1. State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and

2. State that the person is not disqualified, under the provisions of s. 961.04, from seeking compensation under this act.

(2) The prosecuting authority must respond to the petition within 30 days. The prosecuting authority may respond:

(a) By certifying to the court that, based upon the

petition and verifiable and substantial evidence of actual innocence, no further criminal proceedings in the case at bar can or will be initiated by the prosecuting authority, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from seeking compensation under the provisions of s. 961.04; or

(b) By contesting the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful incarceration, or whether the petitioner is ineligible from seeking compensation under the provisions of s. 961.04.

(3) If the prosecuting authority responds as set forth in paragraph (2)(a), the original sentencing court, based upon the evidence of actual innocence, the prosecuting authority's certification, and upon the court's finding that the petitioner has presented clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense, shall certify to the department that the petitioner is a wrongfully incarcerated person as defined by this act. Based upon the prosecuting authority's certification, the court shall also certify to the department that the petitioner is eligible for compensation under the provisions of s. 961.04.

(4)(a) If the prosecuting authority responds as set forth in paragraph (2)(b), the original sentencing court shall make a determination from the pleadings and supporting documentation whether, by a preponderance of the evidence, the petitioner is

ineligible for compensation under the provisions of s. 961.04, regardless of his or her claim of wrongful incarceration. If the court finds the petitioner ineligible under the provisions of s. 961.04, it shall dismiss the petition.

(b) If the prosecuting authority responds as set forth in paragraph (2)(b), and the court determines that the petitioner is eligible under the provisions of s. 961.04, but the prosecuting authority contests the nature, significance or effect of the evidence of actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court shall set forth its findings and transfer the petition by electronic means through the division's website to the division for findings of fact and a recommended determination of whether the petitioner has established that he or she is a wrongfully incarcerated person who is eligible for compensation under this act.

Section 5. For the purpose of incorporating the amendment made by this act to section 961.06, Florida Statutes, in a reference thereto, subsection (6) of section 961.05, Florida Statutes, is reenacted to read:

961.05 Application for compensation for wrongful incarceration; administrative expunction; determination of entitlement to compensation.—

(6) If the department determines that a claimant meets the requirements of this act, the wrongfully incarcerated person who is the subject of the claim becomes entitled to compensation, subject to the provisions in s. 961.06.

Section 6. For the purpose of incorporating the amendment made by this act to section 961.06, Florida Statutes, in a

reference thereto, subsection (1) of section 961.055, Florida Statutes, is reenacted to read:

961.055 Application for compensation for a wrongfully incarcerated person; exemption from application by nolle prosequi.—

(1) A person alleged to be a wrongfully incarcerated person who was convicted and sentenced to death on or before December 31, 1979, is exempt from the application provisions of ss. 961.03, 961.04, and 961.05 in the determination of wrongful incarceration and eligibility to receive compensation pursuant to s. 961.06 if:

(a) The Governor issues an executive order appointing a special prosecutor to review the defendant's conviction; and

(b) The special prosecutor thereafter enters a nolle prosequi for the charges for which the defendant was convicted and sentenced to death.

Section 7. For the purpose of incorporating the amendment made by this act to section 961.06, Florida Statutes, in a reference thereto, subsection (4) of section 961.056, Florida Statutes, is reenacted to read:

961.056 Alternative application for compensation for a wrongfully incarcerated person.—

(4) If the department determines that a claimant making application under this section meets the requirements of this chapter, the wrongfully incarcerated person is entitled to compensation under s. 961.06.

Section 8. This act shall take effect October 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 6, 2017

I respectfully request that **Senate Bill #494**, relating to Compensation of Victims of Wrongful Incarceration, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 5

File signed original with committee office

S-020 (03/2004)

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

494
Bill Number (if applicable)

Topic Wrongful Incarceration Compensation

Amendment Barcode (if applicable)

Name Seth Miller

Job Title Executive Director - Innocence Project of Florida

Address 1100 E. Park Avenue
Street

Phone 850-561-6767

Tallahassee FL 32301
City *State* *Zip*

Email smiller@floridainnocence.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Innocence Project of 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)

25 Apr 17
Meeting Date

494
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Compensation - Wrongful Victims

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall 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 Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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this 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)

4/25/17
Meeting Date

494
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Wrongful Incarceration Compensation

Name Herman Lindsey

Job Title

Address 5301 N.E. 17th Ave
Street

Phone 954-991-8731

Pompano Beach FL 33064
City *State* *Zip*

Email Herm4Justice@gmail.co

Speaking: ☑ For ☐ Against ☐ Information

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

Representing ~~Florida~~ Witness to Innocence

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 25, 2017
Meeting Date

494
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Compensation of Victims of Wrongful Incarceration

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street
Street

Phone 850-488-6850

Tallahassee FL 32301
City *State* *Zip*

Email ndaniels@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 1844
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Bradley
SUBJECT:	Public Records/Compassionate Use Registry
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ferrin	Ferrin	GO	**Fav/CS**
2.	Loe	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1844 expands the public records exemption for the Compassionate Use Registry (registry) to conform its provisions to changes being made to section 381.986, Florida Statutes, regarding the compassionate use of low-THC and medical marijuana by CS/SB 406. Specifically, the bill makes a qualifying patient's and a caregiver's personal identifying information held in the registry confidential and exempt from public records laws; clarifies that law enforcement access to the registry is for the purpose of verifying the authorization of a qualifying patient or caregiver to possess marijuana; and expands access to information within the registry to:

- Allopathic and osteopathic physicians licensed under chapter 458 or 459, Florida Statutes, respectively;
- Practitioners licensed to prescribe prescription drugs to ensure proper care for patients before prescribing medications that may interact with marijuana; and
- Employees of the Department of Health (DOH) for the purpose of monitoring physician registration in the registry and monitoring physician certifications for practices that could facilitate diversion or misuse of marijuana.

The bill also extends the open government sunset review date to October 2, 2022, includes the constitutionally required public necessity statement, and makes other conforming changes to provisions amended by CS/SB 406.

The bill requires a two-thirds vote from each chamber for passage.

The bill has no impact on state revenues or expenditures.

The bill takes effect on the same date as CS/SB 406, or other similar legislation, becomes a law, provided both are adopted in the same legislative session.

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

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[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.*

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 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:

- 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]

[11] *Id*.
[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.

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.

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]

Medical Marijuana in Florida

The Compassionate Medical Cannabis Act of 2014[24] (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)[25] for medical use[26] by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms.

In 2016, Florida voters approved Amendment 2 that added s. 29, Art. X to the State Constitution. This new constitutional provision approved the medical use of marijuana by certain patients with debilitating medical conditions pursuant to a physician's certification. CS/SB 406 is proposed legislation that amends Florida's current low-THC and medical cannabis law to implement the provisions of s. 29, Art. X of the State Constitution. Along with other requirements, s. 29(d)(4), Art. X of the State Constitution requires that the DOH protect the confidentiality of all qualifying patients and makes all records containing the identity of qualifying patients confidential except for valid medical or law enforcement purposes.

For more details on current medical marijuana laws in Florida and other states, including details on Amendment 2, and s. 29, Art. X of the State Constitution, please see the analysis for CS/SB 406.

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[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?
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] Chapter 2014-157, Laws of Fla., codified in s. 381.986, F.S.

[25] Section 381.986(b), F.S., defines "low-THC cannabis," as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

[26] Section 381.986(1)(c), F.S., defines "medical use" as administration of the ordered amount of low-THC cannabis; and the term does not include the possession, use, or administration by smoking, or the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative. Section 381.986(1)(e), F.S., defines "smoking" as burning or igniting a substance and inhaling the smoke; smoking does not include the use of a vaporizer.

Compassionate Use Registry and Identification Cards

Section 381.986, F.S., requires the DOH to create a secure, electronic, and online registry, for the registration of physicians and patients and for the verification of patient orders by dispensing organizations (DOs) that is accessible to law enforcement.[27] The registry must allow DOs to record the dispensing of low-THC cannabis, and must prevent an active registration of a patient by multiple physicians. Physicians must register qualified patients with the registry and DOs are required to verify that the patient has an active registration in the registry, that the order presented matches the order contents as recorded in the registry, and that the order has not already been filled before dispensing any low-THC cannabis. The DOs are also required to record in the registry the date, time, quantity, and form of low-THC cannabis dispensed.[28] The registry became operational on July 11, 2016.[29] As of the end of February 2017, there were 4,079 patients registered with the registry.[30]

On February 19, 2017, the DOH adopted Rule 64-4.011, F.A.C., which governs the issuance and renewal of registry identification cards (ID card). The rule requires patients and legal representatives to obtain ID cards to obtain low-THC cannabis, medical cannabis, or a cannabis delivery device. In order to obtain an ID card, a patient or legal representative must submit an application form[31] created by the DOH. The form requires the patient or legal representative to submit personal identifying information to the DOH including his or her name, address, social security number, telephone number, date of birth, a passport style photo, and proof of residency including a driver's license, utility bill, or voter registration card.

CS/SB 406 amends the section of law governing both the registry and issuing of ID cards[32] to conform terms to definitions provided in s. 29, Art. X of the State Constitution (such as changing the term "legal representative" to "caregiver") and to provide more statutory detail on what is required to be on an ID card. CS/SB 406 requires that all patient and caregiver ID cards include, at a minimum:

- The name, address, and date of birth of the patient or caregiver, as appropriate;
- A full-face, passport-type, color photograph of the patient or caregiver, as appropriate, taken within 90 days immediately preceding registration;
- A designation of the cardholder as a patient or caregiver;
- A unique numeric identifier for the patient or caregiver that is matched to the identifier used for such person in the DOH's compassionate use registry. A caregiver's identification number and file in the compassionate use registry must be linked to the file of the patient or patients the caregiver is assisting so that the caregiver's status may be verified for each patient individually;

[27] Section 381.986(5)(a), F.S.
[28] Section 381.986(6), F.S.
[29] Office of Compassionate Use, *Implementation Timeline* (October 2016) *available at* http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/_documents/ocu-timeline.pdf, (last visited Mar. 21, 2017).
[30] Revenue Estimating Conference, *Use of Marijuana for Debilitating Medical Conditions* (March 2, 2017), p. 3, (on file with the Senate Committee on Health Policy).
[31] For patients form DH8009-OCU-10/2016, available at https://www.flrules.org/Gateway/reference.asp?No=Ref-07855, (last visited on April 12, 2017) and for legal representatives form DH8010-OCU-10/2016 available at https://www.flrules.org/Gateway/reference.asp?No=Ref-07856, (last visited on April 12, 2017).
[32] Section 381.986, F.S.

- The expiration date, which shall be one year after issuance or the date treatment ends as provided in the patient's physician certification, whichever occurs first; and
- For caregivers who are assisting three or fewer qualifying patients, the names and unique numeric identifiers of the qualifying patient or patients that the caregiver is assisting.

Additionally, CS/SB 406[33] allows non-Florida residents to receive ID cards if they qualify for an ID card in Florida and if the DOH confirms that they are able to legally receive marijuana in their state of residency. This confirmation will likely require the submission of some additional personal identifying information to the DOH, which is not detailed in the bill.

III. Effect of Proposed Changes:

The bill amends s. 381.987, F.S., to conform its provisions to changes made to s. 381.986, F.S., by CS/SB 406.

Section 1 of the bill:

- Makes a qualifying patient's or caregiver's personal identifying information that is held in the Compassionate Use Registry (registry) confidential and exempt from public records laws. Protected information includes, but is not limited to:
  - The patient's name, address, date of birth, photograph, telephone number, and government-issued identification number;
  - All information collected for the purpose of issuing a qualifying patient's or caregiver's registry identification card;[34] and
  - All information pertaining to a physician certification for marijuana;
- Clarifies that law enforcement access to the registry is for the purpose of verifying the authorization of a qualifying patient or caregiver to possess marijuana; and
- Expands access to information within the registry to:
  - Allopathic and osteopathic physician's licensed under ch. 458 or 459, F.S., respectively;
  - Practitioner's licensed to prescribe prescription drugs to ensure proper care for patients before prescribing medications that may interact with marijuana; and
  - Employees of the Department of Health (DOH) for the purpose of monitoring physician registration in the compassionate use registry and monitoring physician certifications for practices that could facilitate diversion or misuse of marijuana.

The bill also extends the open government sunset review date to October 2, 2022, and makes other conforming and technical changes.

Section 2 of the bill provides legislative findings. The bill states that the Legislature finds it is a public necessity to protect qualifying patients' and caregivers' information in the registry, including all information pertaining to the physician's certification of marijuana for the patient, in order to protect their privacy. The Legislature finds that the public availability of registry information could make the public aware of a patient's medical diseases or conditions and may

[33] As originally filed, SB 406 restricted ID cards to Florida residents, however as amended by the Health Policy Committee on April 3, 2017, CS/SB 406 allows non-Florida residents to receive ID cards.
[34] This information includes the caregiver's name, address, date of birth, photograph, and registry ID card number.

also expose patients and caregivers to discrimination for their use, or assisting with the use, of marijuana.

Section 3 provides that the bill takes effect on the same date that CS/SB 406, or similar legislation, becomes a law, provided both are adopted in the same legislative session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public records or public meetings exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill creates a new public records exemption and includes a public necessity statement.

Breadth of Exemption

Article I, s. 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 exempts certain identifying information of caregivers that is held by the DOH within the registry. The public necessity for the exemption provides that it is necessary to protect patient and caregiver information from disclosure to protect their privacy and to protect them from potential discrimination. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.987 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on April 17, 2017:
The following changes were made to align the public records exemption in SB 1844 with provisions in CS/SB 406, its linked substantive bill:

- Includes the "date of birth" and "photograph" on an ID card to the specified information exempted from public disclosure; and
- Clarifies that all information collected for the purpose of issuing an ID card is exempt, rather than just the information on the ID card.

B. Amendments:

None.

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

585-03992-17 20171844c1

A bill to be entitled

An act relating to public records; amending s. 381.987, F.S.; providing an exemption from public records requirements for a qualifying patient's or caregiver's personal identifying information, all information contained on their compassionate use registry identification cards, and all information pertaining to a physician certification for marijuana; requiring the Department of Health to allow access to the compassionate use registry to a law enforcement agency, a medical marijuana treatment center, certain licensed practitioners, certain employees of the department, and certain persons engaged in research, for specified purposes; extending the date of future review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 381.987, Florida Statutes, is amended to read:

381.987 Public records exemption for personal identifying information in the compassionate use registry.—

(1) A qualifying patient's or caregiver's personal identifying information held by the department in the compassionate use registry established under s. 381.986, including, but not limited to, the qualifying patient's or caregiver's name, address, date of birth, photograph, telephone

585-03992-17 20171844c1

number, and government-issued identification number, all information collected for the purpose of issuing a qualifying patient's or caregiver's compassionate use registry identification card issued in accordance with s. 381.986, and all information pertaining to a physician certification for marijuana ~~the physician's order for low-THC cannabis~~ and the dispensing thereof are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) A physician's identifying information held by the department in the compassionate use registry established under s. 381.986, including, but not limited to, the physician's name, address, telephone number, government-issued identification number, and Drug Enforcement Administration number, and all information pertaining to the physician certification for marijuana ~~physician's order for low-THC cannabis~~ and the dispensing thereof are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) The department shall allow access to the registry, including access to confidential and exempt information, to:

(a) A law enforcement agency, to verify the authorization of a qualifying patient or a qualifying patient's caregiver to possess marijuana or a marijuana delivery device ~~that is investigating a violation of law regarding cannabis in which the subject of the investigation claims an exception established~~ under s. 381.986.

(b) A medical marijuana treatment center registered with ~~dispensing organization approved by~~ the department pursuant to s. 381.986, ~~which is attempting~~ to verify the authenticity of a physician certification ~~physician's order~~ for marijuana ~~low-THC~~

~~cannabis~~, including whether the physician certification ~~order~~ had been previously filled and whether the physician certification ~~order~~ was written for the person attempting to have it filled.

(c) A physician licensed under chapter 458 or chapter 459, to ensure proper care for patients ~~who has written an order for low-THC cannabis for the purpose of monitoring the patient's use of such cannabis or for the purpose of determining, before issuing an order for low-THC cannabis, whether another physician has ordered the patient's use of low-THC cannabis. The physician may access the confidential and exempt information only for the patient for whom he or she has ordered or is determining whether to order the use of low-THC cannabis pursuant to s. 381.986~~.

(d) A practitioner licensed to prescribe prescription drugs, to ensure proper care for patients before prescribing medications that may interact with marijuana.

(e) An employee of the department for the purposes of maintaining the registry and periodic reporting or disclosure of information that has been redacted to exclude personal identifying information.

(f) An employee of the department for the purpose of monitoring physician registration in the compassionate use registry and the issuance of physician certifications as authorized in s. 381.986 for practices that could facilitate unlawful diversion or misuse of marijuana or cannabis delivery devices.

(g) ~~(e)~~ The department's relevant health care regulatory boards responsible for the licensure, regulation, or discipline of a physician if he or she is involved in a specific

investigation of a violation of s. 381.986. If a health care regulatory board's investigation reveals potential criminal activity, the board may provide any relevant information to the appropriate law enforcement agency.

(h) ~~(f)~~ A person engaged in bona fide research if the person agrees:

1. To submit a research plan to the department which specifies the exact nature of the information requested and the intended use of the information;

2. To maintain the confidentiality of the records or information if personal identifying information is made available to the researcher;

3. To destroy any confidential and exempt records or information obtained after the research is concluded; and

4. Not to contact, directly or indirectly, for any purpose, a patient or physician whose information is in the registry.

(4) All information released from the registry under subsection (3) remains confidential and exempt, and a person who receives access to such information must maintain the confidential and exempt status of the information received.

(5) A person who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022 ~~2019~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the personal identifying information of

qualifying patients who use marijuana for medical reasons and of these patients' caregivers held by the Department of Health in the compassionate use registry established under s. 381.986, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Specifically, the Legislature finds that it is a public necessity to make confidential and exempt from public records requirements the names, addresses, dates of birth, photographs, telephone numbers, and government-issued identification numbers of a qualifying patient and the patient's caregiver, any other information collected for the purpose of issuing the qualifying patient's or caregiver's compassionate use registry identification card issued pursuant to s. 381.986, Florida Statutes, and all information pertaining to a physician certification for marijuana issued in accordance with s. 381.986, Florida Statutes, which are held in the registry. The choice to use marijuana to treat a qualifying patient's medical condition or symptom and the choice to assist a qualifying patient with the medical use of marijuana are personal and private matters. The availability of such information to the public could make the public aware of both the qualifying patient's use of marijuana and the qualifying patient's disease or other medical conditions for which the qualifying patient is using marijuana. The knowledge of the qualifying patient's use of marijuana, the knowledge of the qualifying patient's medical condition, and the knowledge that a caregiver is assisting a qualifying patient with the use of marijuana could be exploited to embarrass, harass, or discriminate against the qualifying patient and the patient's caregiver and could also be used as a

discriminatory tool by an employer who disapproves of the qualifying patient's use of marijuana or the caregiver's assistance in the use of marijuana. However, despite the potential hazards of collecting such information, maintaining the compassionate use registry established under s. 381.986, Florida Statutes, is necessary to prevent the diversion and nonmedical use of any marijuana as well as to aid and improve research done on the efficacy of marijuana. Thus, the Legislature finds that it is a public necessity to make confidential and exempt from public records requirements the personal identifying information of qualifying patients and caregivers held by the Department of Health in the compassionate use registry established under s. 381.986, Florida Statutes.

Section 3. This act shall take effect on the same date that SB 406 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 19, 2017

I respectfully request that **Senate Bill # 406: Compassionate Use of Low-THC Cannabis and Marijuana and Senate Bill # 1844: Public Records/Compassionate Use Registry**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Rob Bradley
Florida Senate, District 5

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

Topic _____ Bill Number 1844 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH *Street* Phone 727-897-9291

SAINT PETERSBURG *City* FLORIDA *State* 33705 *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.

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Apr 17
Meeting Date

1844
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Public Records

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall 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 Fla. Smart Justice Alliance

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

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 668
INTRODUCER:	Education Committee and Senators Bean and Bradley
SUBJECT:	Postsecondary Distance Education
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.		Graf	ED	**Fav/CS**
2.	Sikes	Elwell	AHE	**Recommend: Favorable**
3.	Sikes	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 668 authorizes the State of Florida to participate in the State Authorization Reciprocity Agreement (SARA) for the delivery of postsecondary distance education. Specifically, the bill:

- Requires all parties to the SARA must be willing to accept each other's authorization of accredited institutions to operate in their state to offer distance education services.
- Establishes the Postsecondary Reciprocal Distance Education Coordinating Council (Council) within the Florida Department of Education, for the purpose of entering into and administering the SARA.
- Establishes membership of the Council and requires the Commission for Independent Education to provide administrative support to the Council.
- Requires the Council to propose an annual fee schedule and collect fees from each Florida institution participating in the SARA.
- Requires the State Board of Education to adopt rules for the implementation of the SARA.

The bill has no impact on state expenditures. *See* Section V. Fiscal Impact Statement for details.

The bill takes effect upon becoming law.

II. Present Situation:

Students may access higher education through the traditional classroom setting or through distance education.

The Southern Association of Colleges and Schools Commission on Colleges defines distance learning as a formal educational process in which the majority of the instruction in a course occurs when students and instructors do not share the same location.[1] Florida law defines distance learning, for the purpose of assessing a distance learning course fee, as a course in which at least 80 percent of direct instruction of the course is delivered using some form of technology when the student and instructor are separated by time or space, or both.[2]

The Southern Regional Education Board

The Southern Regional Education Board (SREB) maintains a regional system for sharing online college courses known as the Electronic Campus (EC).[3] SREB's EC allows students residing in an SREB member state to access online courses in any SREB state through the SREB's Electronic Reciprocity Agreement (SECRRA).[4] The SECRRA is a voluntary agreement, which allows institutions that offer courses and degree programs that have been reviewed and approved by the institution's home state to be recognized as approved to offer courses in other SREB states.[5] In order to participate in SECCRA, an institution must be not-for-profit, regionally accredited, and charted in one of the 16 SREB member states.[6] Florida currently participates in this agreement.[7]

The SECRRA will expire on June 30, 2017.[8]

Federal Requirements

Federal law requires each state to regulate out-of-state educational institutions with a physical presence in their state or that provides an education via distance learning to students in that state.[9] The state authorization of online programs can be achieved through a state authorization reciprocity agreement.[10] A "state authorization reciprocity agreement" is

> …an agreement between two or more states that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students residing in other States covered by the agreement and does not prohibit any State in agreement from enforcing its

[1] Southern Association of Colleges and Schools Commission on Colleges, *Policy Statement, Distance and Correspondence Education* (2014), *available at* http://www.sacscoc.org/pdf/DistanceCorrespondenceEducation.pdf.
[2] Sections 1009.23(16) and 1009.24(7), F.S.
[3] Southern Regional Education Board, *State Authorization, SREB and the State Authorization Reciprocity Agreement,* http://www.sreb.org/state-authorization-sara-secrra (last visited March 24, 2017).
[4] Southern Regional Education Board, *State Authorization, SREB's Regional Agreement, SECRRA,* http://www.sreb.org/state-authorization-sara-secrra (last visited March 24, 2017).
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] Southern Regional Education Board, *State Authorization, SECRRA Dissolve Date,* http://www.sreb.org/state-authorization-sara-secrra (last visited March 24, 2017).
[9] 34 C.F.R. s. 600.9.
[10] *Id. See also* National Council for State Authorization Reciprocity Agreements, *About NC-SARA,* http://nc-sara.org/about (last visited March 24, 2017).

> own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions. [11]

Currently, there is a national interstate reciprocity agreement for the state authorization of distance learning programs.[12]

State Authorization Reciprocity Agreement

The State Authorization Reciprocity Agreement, also known as SARA, is a voluntary agreement among participating states that establishes comparable national standards for interstate offerings of postsecondary distance education courses and programs.[13] SARA is overseen by a national council[14] and administered by the four regional education compacts.[15] SARA membership requires the state to designate a portal entity as the coordinating entity responsible for contact with other state entities and students from other states.[16] Each state must apply to the National Council for SARA (NC-SARA) through its portal entity to be a member of SARA.[17] Once a state becomes a member of SARA, institutions within that state are authorized to apply to the portal entity to participate in SARA.[18] An institution in an SARA member state is not required to participate in SARA.[19]

To participate in SARA, an institution must:[20]

- Be a degree granting institution;
- Be physically located in the United States;
- Hold proper authorization from Congress, a U.S. state, or a federally recognized Indian Tribe; and
- Hold accreditation as a single entity from an accrediting association recognized by the U.S. Department of Education and whose scope of authority includes distance education.

Institutions participating in the reciprocity agreement pay a fee directly to NC- SARA based on the institution's full-time equivalent enrollment.[21] States have the option of charging a SARA-participating institution a fee to cover the state's costs in administering SARA.[22]

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[11] Program Integrity and Improvement, 81 Fed. Reg. 92232 (Dec. 19, 2016).
[12] National Council for State Authorization Reciprocity Agreements, *About NC-SARA*, http://nc-sara.org/about (last visited March 24, 2017).
[13] National Council for State Authorization Reciprocity Agreements, *About NC-SARA*, http://nc-sara.org/about (last visited March 24, 2017).
[14] National Council for State Authorization Reciprocity Agreements, *National Council Board*, http://nc-sara.org/about/national-council (last visited March 24, 2017).
[15] The four regional education compacts are the Midwestern Higher Education Compact, the New England Board of Higher Education, the Southern Regional Education Board, and the Western Interstate Commission for Higher Education. National Council for State Authorization Reciprocity Agreements, *State Authorization Reciprocity Agreements Policy and Operations Manual* (2016), *available at* http://nc-sara.org/files/docs/NC-SARA_Manual_Final_2016.pdf, at 5 of 88.
[16] *Id.* at 11-12 of 88.
[17] *Id.* at 14 of 88.
[18] *Id.* at 20 of 88.
[19] *Id.* at 3 of 88.
[20] National Council for State Authorization Reciprocity Agreements, *State Authorization Reciprocity Agreements Policy and Operations Manual* (2016), *available at* http://nc-sara.org/files/docs/NC-SARA_Manual_Final_2016.pdf, at 17 of 88.
[21] National Council for State Authorization Reciprocity Agreements, *State Authorization Reciprocity Agreements Policy and Operations Manual* (2016), *available at* http://nc-sara.org/files/docs/NC-SARA_Manual_Final_2016.pdf, at pg. 21 of 88.
[22] *Id.*

The Commission for Independent Education

The Commission for Independent Education (CIE) is responsible for matters relating to nonpublic postsecondary educational institutions.[23] The CIE's functions include consumer protection; program improvements; institutional policies and administration; data management; licensure of independent schools, colleges and universities; and establishing minimum standards for the approval of employees of independent postsecondary educational institutions.[24] The CIE may adopt rules to ensure that licensed employees of an independent postsecondary educational institution meets specified standards.[25] An employee of an independent postsecondary educational institution may not solicit prospective students in Florida for enrollment in any independent postsecondary educational institution under the CIE's purview or in any out-of-state independent postsecondary educational institution unless the employee has received a license as prescribed by the CIE.[26]

III. Effect of Proposed Changes:

This bill authorizes the state of Florida to participate in the State Authorization Reciprocity Agreement (SARA) for the delivery of postsecondary distance education. Specifically, the bill:

- Specifies that all parties to the SARA must be willing to accept each other's authorization of accredited institutions to operate in their state to offer distance education services.
- Establishes the Postsecondary Reciprocal Distance Education Coordinating Council (Council) within the Florida Department of Education, for the purpose of entering into and administering the SARA.
- Establishes membership of the Council and requires the Commission for Independent Education (CIE) to provide administrative support to the Council.
- Requires the Council to propose an annual fee schedule and collect fees from each Florida institution participating in the SARA.
- Requires the State Board of Education to adopt rules for the implementation of the SARA.

Under the section 1, each member state or institution that participates in the SARA must be willing to accept the participating states' authorization of accredited institutions to operate in their states to offer distance educational services beyond state boundaries.

Section 1 defines institution to mean a public or private postsecondary educational institution that is accredited by a federally recognized accrediting body that awards, at a minimum, associate level degrees requiring at least two years of full-time equivalent college coursework.

[23] Section 1005.22, F.S.
[24] Section 1005.04, F.S.
[25] Section 1005.22(e), F.S.
[26] Section 1005.31(11), F.S.

Postsecondary Reciprocal Distance Education Coordinating Council Responsibilities (Section 1)

Section 1 grants to the Council the authority to apply to National Council for SARA (NC-SARA) and recommend rules, necessary to administer the SARA, for adoption by the State Board of Education.[27] Additionally, the Council is required to:

- Review and approve applications from Florida institutions to participate in the SARA and establish an appeals process for institutions that are not approved to participate in the SARA;
- Ensure compliance by Florida's institutions with the terms of the SARA, including but not limited to, accreditation and institutional quality, and consumer information and protection;
- Comply with the terms and provisions of the SARA relating to any member state, Florida institution, or non-Florida institution;
- Comply with reporting requirements in the SARA and post all such reports on the Council's website;
- Develop and administer a complaint resolution process for complaints related to the SARA; and
- Delegate to the CIE's staff any responsibilities, obligations, or authorities necessary for the administration of Florida's participation in the SARA.
- Propose an annual fee schedule and collect fees from each Florida SARA institution. The fees must be commensurate with the costs incurred by the Council.

The Council must consist of the Chancellor of the State University System, the Chancellor of the Florida College System, the Chancellor of the Division of Career and Adult Education, the Executive Director of the CIE, and the President of the Independent Colleges and Universities of Florida.

Commission for Independent Education Responsibilities (Sections 2 and 3)

Section 2 provides that a non-Florida institution participating in the SARA that offers degree programs and conducts activities limited to distance education degree programs and activities in accordance with the SARA is not under the jurisdiction of the CIE. As a result, the CIE is not required to independently authorize every institution that provides distance education that serves Florida's students.

Additionally, section 3 specifies that an employee of an independent postsecondary educational institution may not solicit prospective students in Florida for enrollment in any independent postsecondary educational institution unless the employee solicits for a postsecondary educational institution that is a member of the SARA, and therefore not under the jurisdiction of the CIE.

The bill takes effect upon becoming law.

[27] State University System of Florida Board of Governors, *2017 Agency Legislative Bill Analysis for SB 668* (Feb. 14, 2017), at 3.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[28] Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Florida law provides that access to public records is a duty of each agency.[29] Florida law defines "agency" in part as "any separate unit of government created or established by law."[30] The bill creates the Council in the Florida Statutes and therefore, the Council would be subject to the requirements of chapter 119.[31] Likewise, the Commission on Independent Education, providing administrative support of the council, may be an "agency" for purposes of ch. 119, F.S., for records relating to the council.

Public Meetings

Article I, s. 24(b) of the Florida Constitution sets forth the state's policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.[32]

The Council would be statutorily responsible for taking governmental actions such as serving as the single portal entity designated by the state to administer SARA and the point of contact for SARA-related questions, complaints, and other matters related to SARA. Accordingly, the Council would be subject to the public meetings law.[33] Individual members of the council must ensure that all discussions regarding matters before the council are in compliance with the public meetings law.

C. Trust Funds Restrictions:

None.

[28] Art I, s. 24, Fla. Const.
[29] Section 119.01(1), F.S.
[30] *Id.* at (2).
[31] Email, Board of Governors of the State University System of Florida (April 7, 2017).
[32] Section 286.011, F.S.
[33] Email, Board of Governors of the State University System of Florida (April 7, 2017).

D. Other Constitutional Issues:

Dual Office-holdings

Article II, s. 5 of the Florida Constitution prohibits any person holding any office of emolument under any foreign government, or civic office of emolument under the United States or any other state from holding any office of honor or emolument under the government of Florida. No person may hold at the same time more than one office under the government of Florida and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers. This provision prohibits a person from simultaneously serving in more than one "office" under the governments of the state, counties, or municipalities. Article II, s. 5 does not define the term "office" or "officer" for the purposes of the dual office-holding prohibition. The Supreme Court of Florida has stated:

> The term "office" implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office, while an "employment" does not comprehend a delegation of any part of the sovereign authority. The term "office" embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract. An employment does not authorize the exercise in one's own right of any sovereign power or any prescribed independent authority of a governmental nature; and this constitutes the most decisive difference between an employment and an office…"

Accordingly, it is the nature of the power and duties of a particular position, which determines whether it is an "office" or an "employment."

The bill requires the membership of the Postsecondary Reciprocal Distance Education Coordinating Council must include the Chancellor of the State University System (SUS), the Chancellor of the Florida College System (FCS), the Chancellor of the Division of Career and Adult Education (CAE), the Executive Director of the Commission for Independent Education (CIE) and the president of the Independent Colleges and Universities of Florida (ICUF).

According to the Board of Governors, the positions enumerated in the bill do not constitute an "office." In 1974, the Attorney General concluded the position of Chancellor, at that time, did not have the indicia of state "offices". The same conclusion may apply to the chancellors of the FCS and Division of CAE, and the executive director for the CIE because of similarities in such positions.

Should the above positions be considered offices, the attorney general has found that the prohibition on dual office holding does not apply where the legislature is "directing that

official to serve as a member and carry out the powers and duties of another office because of an office already held by him, where the duties of the two offices are not incompatible and not inconsistent."

If the nature of the powers and duties of the chancellor position is similar to those powers and duties in 1974, the chancellor may be able to rely on the 1974 Attorney General Opinion. On the other hand, if the powers and duties have been expanded to the extent that the chancellor today is an officer, the consequences of serving on this new council are significant.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the Department of Education, an estimated 45 private postsecondary institutions will participate in the State Authorization Reciprocity Agreement (SARA).[34] The annual fee required for participation is based on full-time equivalent (FTE) student enrollment as specified in the table below.[35]

Enrolled FTE	SARA Annual Fee
Under 2,500	$2,000
2500-9,999	$4,000
10,000 or more	$6,000

C. Government Sector Impact:

The Department of Education estimates 75 public and private postsecondary institutions will participate in SARA, resulting in approximately $318,000 in annual fee revenue deposited into the Institutional Assessment Trust Fund. These funds will be used to pay the council's annual operational costs, which are estimated to be $225,000.[36]

VI. Technical Deficiencies:

None.

[34] Florida Department of Education, *2017 Agency Bill Analysis for SB 668* (April 4, 2017).
[35] National Council for State Authorization Reciprocity Agreements, *State Authorization Reciprocity Agreements Policy and Operations Manual* (2016), *available at* http://nc-sara.org/files/docs/NC-SARA_Manual_Final_2016.pdf
[36] Florida Department of Education, *2017 Agency Bill Analysis for SB 668* (April 4, 2017).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1005.06 and 1005.31.

This bill creates section 1000.35 of the Florida Statutes.

IX. Additional Information:

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

CS by Education March 27, 2017:
The committee substitute:

- Authorizes Florida to participate specifically in the State Authorization Reciprocity Agreement (SARA).
- Specifies that all parties to the SARA must be willing to accept each other's authorization of accredited institutions to offer distance educational services.
- Requires the Postsecondary Reciprocal Distance Education Coordinating Council (Council) to apply to participate in the SARA within 60 days after the effective date of this act.
- Specifies the terms and conditions with which Florida SARA institutions must comply, including, but not limited to, accreditation and institutional quality, consumer information and protections, disclosure and reporting requirements, complaint mechanisms and financial responsibility.
- Requires the annual fee schedule, proposed by the Council, be based on a graduated scale based on enrollment.

B. Amendments:

None.

By the Committee on Education; and Senator Bean

581-02932-17 2017668c1

A bill to be entitled

An act relating to postsecondary distance education; creating s. 1000.35, F.S.; authorizing this state to participate in the State Authorization Reciprocity Agreement (SARA) for delivery of postsecondary distance education; providing definitions; establishing the Postsecondary Reciprocal Distance Education Coordinating Council within the Department of Education; requiring the Commission for Independent Education to provide administrative support for the council; providing membership and duties of the council; requiring the council to propose an annual fee schedule and collect fees from Florida SARA institutions; requiring the proposed fee schedule to be submitted to the State Board of Education for approval; providing for deposit of such fees into a specified trust fund; authorizing the council to revoke a Florida SARA institution's participation for noncompliance; authorizing such institution to withdraw from participation in the SARA after providing notice; exempting council decisions from the Administrative Procedure Act; providing that provisions relating to the jurisdiction of the commission are not superseded; requiring the state board to adopt rules; amending s. 1005.06, F.S.; providing that the commission does not have jurisdiction over certain non-Florida institutions participating in the SARA; amending s. 1005.31, F.S.; authorizing the solicitation of prospective students

581-02932-17 2017668c1

for enrollment in certain postsecondary educational institutions; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Section 1000.35, Florida Statutes, is created to read:

1000.35 State Authorization Reciprocity Agreement.—

(1) The purpose of this section is to authorize this state's participation in the State Authorization Reciprocity Agreement (SARA) as established by the Southern Regional Education Board (SREB) and the National Council for State Authorization Reciprocity Agreements (NC-SARA) relative to postsecondary distance education as defined in the SARA. All parties to the SARA must be willing to accept each other's authorization of accredited institutions to operate in their state to offer distance educational services beyond state boundaries.

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

(a) "Commission" means the Commission for Independent Education.

(b) "Complaint" means a formal assertion in writing that a person, institution, state, agency, or other entity operating under the SARA has violated the terms of the SARA or the laws, standards, or regulations incorporated therein.

(c) "Council" means the Postsecondary Reciprocal Distance Education Coordinating Council, which serves as the single

portal entity designated by the state to administer the SARA and serves as the interstate point of contact for SARA-related questions, complaints, and other matters related to the SARA.

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

(e) "Florida SARA institution" means a postsecondary institution in this state approved by the council to participate in the SARA.

(f) "Institution" means a public or private postsecondary degree-granting college or university that is accredited by a federally recognized accrediting body and that awards, at a minimum, associate-level degrees requiring at least 2 years of full-time equivalent college work.

(g) "Member state" means a state, territory, or district within the United States that has been approved to participate in the SARA.

(h) "Non-Florida SARA institution" means an institution approved by a member state other than this state to participate in the SARA.

(i) "SREB" means the Southern Regional Education Board.

(j) "State Authorization Reciprocity Agreement" or "SARA" means the agreement that establishes reciprocity between member states that accept other member states' authorization of accredited institutions to operate in their states to offer distance educational services beyond state boundaries pursuant to the terms and conditions set forth in the agreement.

(k) "State board" means the State Board of Education.

(3) The council is created within the department for the purpose of administering the SARA. The council shall consist of the Chancellor of the State University System, the Chancellor of

the Florida College System, the Chancellor of the Division of Career and Adult Education, the executive director of the commission, and the president of the Independent Colleges and Universities of Florida. The commission shall provide administrative support for the council. The council shall:

(a) Within 60 days after the effective date of this act, apply for this state to participate as a member of the SARA pursuant to the procedures established by the SREB;

(b) Serve as the single portal entity for administration of the SARA;

(c) Review and approve applications from institutions in this state to participate in the SARA and establish an appeals process for institutions that are not approved to participate in the SARA;

(d) Ensure compliance by Florida SARA institutions with the terms and provisions of the SARA, including, but not limited to, accreditation and institutional quality, consumer information and protection, disclosure and reporting requirements, complaint mechanisms, and financial responsibility;

(e) Comply with the terms and provisions of the SARA relating to any member state, Florida SARA institution, or non-Florida SARA institution;

(f) Comply with the reporting requirements in the SARA and post all such reports on the council's website;

(g) Consistent with the complaint resolution processes in the SARA, develop and administer a complaint resolution process to resolve SARA-related complaints after all complaint processes in place at a Florida SARA institution have been exhausted by the complainant;

(h) Delegate any responsibilities, obligations, or authorities necessary for the administration of this state's participation in the SARA to the commission's staff; and

(i) Recommend rules necessary to administer this section for adoption by the state board.

(4) The council shall propose an annual fee schedule and collect fees from each Florida SARA institution. The fees shall be commensurate with the costs incurred by the council and commission to administer the SARA and shall be based on a graduated scale of institutional enrollment. The council shall propose an annual fee schedule to generate the amount of revenue necessary for its operations. The proposed fee schedule shall be submitted to the state board for approval. The department shall include the approved fee schedule in its legislative budget request which takes effect unless revised by the Legislature in the General Appropriations Act. All fees collected pursuant to this subsection shall be submitted through the department to the Chief Financial Officer for deposit into a separate account within the Institutional Assessment Trust Fund. Any fee authorized by the council is nonrefundable unless paid in error.

(5) The council may revoke a Florida SARA institution's approval to participate in the SARA if the council determines such institution is not in compliance with the terms and provisions of the SARA.

(6) A Florida SARA institution may withdraw from participation as a Florida SARA institution by submitting notice of its intent to withdraw to the council, which shall become effective at the beginning of the next academic term after receipt of such notice.

(7) Decisions of the council are not subject to chapter 120.

(8) This section does not supersede the requirements in chapter 1005 relating to postsecondary educational institutions under the jurisdiction of the commission.

(9) The state board shall adopt rules to implement this section.

Section 2. Paragraph (h) is added to subsection (1) of section 1005.06, Florida Statutes, to read:

1005.06 Institutions not under the jurisdiction or purview of the commission.—

(1) Except as otherwise provided in law, the following institutions are not under the jurisdiction or purview of the commission and are not required to obtain licensure:

(h) Any non-Florida institution that has been approved by a member state to participate in the State Authorization Reciprocity Agreement (SARA), as those terms are defined in s. 1000.35(2), if the degree programs that may be offered and the activities that may be conducted by such institution in this state are limited to the distance education degree programs and activities provided in and consistent with the terms and provisions of the SARA.

Section 3. Subsection (11) of section 1005.31, Florida Statutes, is amended to read:

1005.31 Licensure of institutions.—

(11) The commission shall establish minimum standards for the approval of agents. The commission may adopt rules to ensure that licensed agents meet these standards and uphold the intent of this chapter. An agent may not solicit prospective students

in this state for enrollment in any independent postsecondary educational institution under the commission's purview or in any out-of-state independent postsecondary educational institution unless the agent has received a license as prescribed by the commission or solicits for a postsecondary educational institution that is not under the jurisdiction of the commission pursuant to s. 1005.06(1)(h).

Section 4. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 5. 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: April 17, 2017

I respectfully request that **Senate Bill #668**, relating to Postsecondary Distance Education, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

668

Meeting Date | *Bill Number (if applicable)*

Topic Postsecondary Distance Education | *Amendment Barcode (if applicable)*

Name Christopher Wright

Job Title Physician Assistant Student

Address 3686 Dwight Davis Drive | Phone 850-284-2404

Street

Tallahassee FL 32312 | Email ch.wright513@wingate.edu

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.

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)

4/25/2017
Meeting Date

Topic _____ Bill Number 668 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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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S-001 (10/20/11)

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

668
Bill Number (if applicable)

Topic Post Secondary Distance Education

Amendment Barcode (if applicable)

Name BRIAN LOGAN

Job Title Legislative Affairs Director

Address 325 W. Gaines St.
Street

Phone 850-567-0588

Tallahassee FL 32399
City *State* *Zip*

Email brian.logan@flbog.edu

Speaking: ☑ For ☐ Against ☐ Information

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

Representing BOARD OF GOVERNORS

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)

4-25-17
Meeting Date

CS/SB 668
Bill Number (if applicable)

Topic POSTSECONDARY DISTANCE EDUCATION

Amendment Barcode (if applicable)

Name BOB BOYD

Job Title ICUF GENERAL COUNSEL

Address 660 E JEFFERSON ST.
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850-412-0306

Email bboyd@sscflawfirm.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing ICUF - INDEPENDENT COLLEGES & UNIVERSITIES 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.

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)

4/25/17
Meeting Date

SB 668
Bill Number (if applicable)

Topic Post Secondary Distance Edu

Amendment Barcode (if applicable)

Name Brittney Hunt

Job Title Policy Director

Address 136 S. Bronough St
Street

Tall FL 32301
City *State* *Zip*

Phone 521-1200

Email bhunt@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

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)

4/25/17
Meeting Date

668
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Postsecondary Distance Education

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 224-7173

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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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 796
INTRODUCER:	Appropriations Committee; Education Committee; and Senator Bean
SUBJECT:	K-12 Public Schools
DATE:	April 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Androff	Graf	ED	**Fav/CS**
2.	Sikes	Hansen	AP	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 796 creates the high-impact school operator designation, specifies eligibility requirements, and defines related terms. Specifically, the bill:

- Defines high-impact school operator, high-impact schools, and persistently-low performing schools.
- Provides the authority and responsibility of school districts, high-impact operators, high-impact schools, and the State Board of Education with respect to high-impact school operators and high-impact schools.
- Outlines the State Board of Education's role and duties regarding the oversight and implementation of the high-impact school and high-impact operator requirements.
- Establishes a revolving loan program to assist high-impact operators meet school building construction needs, pay for expenses related to the start-up of a new high-impact school, and support the performance-based contract components of high-impact schools.

The bill has no impact on state revenues or expenditures. Funding for high impact schools is subject to appropriation in the General Appropriations Act.
The bill takes effect July 1, 2017.

II. Present Situation:

The Florida Legislature has enacted legislation to promote school choice and strengthen education accountability.

Charter Schools

Charter schools are nonsectarian, public schools that operate under a performance contract with a sponsor, called a charter.[1] A guiding principle of charter schools is to meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state's public school system.[2]

Charter School Application Process

Florida law establishes an application process for establishing a new charter school.[3] An applicant must submit a charter school application to the sponsor.[4] The sponsor must approve or deny the application.[5] The law requires sponsors and applicants to use a standard charter school application and application evaluation instrument.[6] The standard application is designed to enable the sponsor to evaluate the applicant's educational plan, organizational plan, financial viability, and business plan.[7]

In order to facilitate greater collaboration in the application process, an applicant may submit a draft charter school application by May 1 with an application fee of $500.[8] Otherwise, a sponsor is prohibited from charging an applicant any fee for the processing or consideration of an application.[9]

Charter school sponsors evaluate a variety of factors when considering an application to open a charter school.[10] The standard application requires the applicant to:[11]

- List each proposed member of the charter school's governing board and his or her background and qualifications.
- Indicate to what extent the governing board will contract with a management company, summarize the management company's history of operating charter schools, and list other charter schools managed by the company along with student achievement and financial performance data of such schools.

Charter School Accountability

Florida law establishes several requirements designed to hold charter schools accountable both financially and academically, including:[12]

- A detailed application and rigorous review and approval process.

[1] Section 1002.33(5)(a), (6)(h), (7) and (9)(a), F.S.
[2] Section 1002.33(2)(a)1., F.S.
[3] *Id.* at (6)(a).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] Section 1002.33(6)(b), F.S. The deadline for applications is August 1, although a sponsor may receive applications later if it so choses. *Id.*
[9] *Id.*
[10] *Id.* at (6)(a), (7), (8), (9).
[11] *Id.* at (6).
[12] Sections 1002.33(6), (7), (9), 16), (21), (23), (24), (26), and 1002.345, F.S.

- The execution and maintenance of charter agreements between the charter school and its sponsor.
- Annual reporting, annual financial audits, and sponsor monitoring of monthly financial statements.
- Participation in statewide assessments and Florida's school grading system.
- Interventions for unsatisfactory academic performance and financial instability.
- Reporting of student performance information to parents and the public.
- Compliance with ethical standards for employees and governing board members.

Florida assigns each public school, including charter schools, a school grade in order to help parents and the public measure the performance of a school.[13]

Schools are graded using one of the following grades:[14]
- "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.
- "F," for schools failing to make adequate progress – 31% or less of total points.

For a charter school that earns a grade of "D" or "F," the director and a representative of the governing board must appear before the sponsor to address each contract component having noted deficiencies.[15] If a charter school earns three consecutive grades of "D," two consecutive grades of "D" followed by a grade of "F," or two nonconsecutive grades of "F" within a 3-year period, the governing board must choose a statutorily authorized corrective action.[16] Such a charter school may choose one of the following corrective actions:[17]
- Contract for educational services to be provided directly to students, instructional personnel, and school administrators;
- Contract with an outside entity with a track record of effectiveness to operate the school;
- Reorganize the school under a new director or principal who is authorized to hire new staff; or
- Voluntarily close the school.

The charter school must implement the corrective action in the school year following receipt of a third consecutive grade of "D," a grade of "F" following two consecutive grades of "D," or a second nonconsecutive grade of "F" within a 3-year period.[18] A corrective action is no longer required if the charter school improves by at least one letter grade.[19] However, the school must continue to implement its school improvement plan.[20] If a charter school does not improve by at

[13] Florida Department of Education, *2016 Preliminary School Grades Overview, available at* http://schoolgrades.fldoe.org/pdf/1516/SchoolGradesOverview16.pdf.
[14] Section 1008.34(2), F.S.; rule 6A-1.09981, F.A.C.
[15] Section 1002.33(9)(n)., F.S.
[16] *Id.*
[17] Section 1002.33(9)(n)2.a., F.S.
[18] Section 1002.33(9)(n)2.b., F.S.
[19] Section 1002.33(9)(n)2.d., F.S.
[20] *Id.*

least one letter grade after two full school years of implementing a corrective action, the school must choose a different corrective action.[21]

A charter school's charter contract is automatically terminated if the school earns two consecutive grades of "F" after all appeals are final unless:[22]

- The charter school is established to turn around the performance of a district public school;
- The charter school serves a student population the majority of which resides in a school zone served by a district public school that earned a grade of "F" in the year before the charter school opened and the charter school earns at least a grade of "D" in its third year of operation; or
- The State Board of Education grants the charter school a waiver of termination.

III. Effect of Proposed Changes:

The bill creates the high-impact school operator designation, specifies eligibility requirements, and defines related terms. Specifically, the bill:

- Defines high-impact school operator, high-impact schools, and persistently-low performing schools.
- Provides the authority and responsibility of school districts, high-impact school operators and high-impact schools with respect to high-impact school operators and high-impact schools.
- Outlines the State Board of Education's role and duty regarding the oversight and implementation of the high-impact school and high-impact operator requirements.
- Establishes a revolving loan program to assist high-impact operators meet school building construction needs, pay for expenses related to the start-up of a new high-impact school, and support the performance-based contract components of high-impact schools.

High-Impact School Operator (Section 1)

Section 1 defines:

- **High-impact school operator** as a nonprofit organization with tax exempt status under the Internal Revenue Code which operates three or more charter schools that serve students in grades K-12 in Florida or other states, has a record of serving students from low-income families, and is designated by the State Board of Education (SBE) as a high-impact school operator based on the operator meeting specified requirements. The term does not include a for-profit entity.
- **High-impact school** as a full-time public school operated by a high-impact school operator which primarily serves students who were attending, or were assigned to attend, a persistently low-performing school and who comprise at least 60 percent of its total enrollment; which is located in the attendance zone of a persistently low-performing school;

[21] Section 1002.33(9)(n)2.c. and e., F.S. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action. The sponsor may waive corrective actions if it determines that the charter school is likely to improve its grade if additional time is given to implement the school improvement plan. The sponsor may also extend the implementation period for a corrective action based upon a similar standard. The sponsor may not waive or extend corrective actions if the charter school earns a second consecutive grade of "F" while in corrective action. *Id.* Unless an exception applies, such a charter school must be terminated by the sponsor. Section 1002.33(9)(n) 4., F.S.

[22] Section 1002.33(9)(n)4., F.S.

and which is a Title I eligible school. The term does not include a part-time school or a virtual charter school.

- **Persistently low-performing school** as a turnaround school, a school that has earned a grade of "F" or two consecutive grades below a "C," that has been either closed by the state or is persistently, for more than 3 consecutive years, unable to improve to a grade of "C."[23]

Designation Process

Section 1authorizes the SBE to adopt rules prescribing the process and criteria for initial designation as a high-impact school operator and renewal of the designation. The initial designation as a high-impact school operator is valid for 3 years after the high-impact school opens.

The SBE may designate an entity as a high-impact school operator based on a determination that the operator meets at least one of the following requirements:

- The past performance of the high-impact operator meets or exceeds the following criteria:
  - The achievement of enrolled students exceeds the district and state averages of the states in which the operator's schools operate.
  - The average college attendance rate at all schools currently operated by the operator exceeds 80 percent, if such data is available.
  - The percentage of students eligible for a free or reduced price lunch under the National School Lunch Act enrolled at all schools currently operated by the operator exceeds 70 percent.
  - The operator is in good standing with the authorizer in each state in which it operates.
  - The audited financial statements of the operator are free of material exceptions and going concern issues.
  - Other outcome measures as determined by the SBE.
- The operator was awarded a U.S. Department of Education Charter School Program grant for Replication and Expansion of High-Quality Charter Schools within the preceding 3 years before applying to be a high-impact school operator.
- The operator receives funding through the National Fund or a Regional Fund of the Charter School Growth Fund to accelerate the growth of the nation's best charter schools.
- A district school board selected the operator in the turnaround process in accordance with the law.

Section 1 provides that before the SBE adopts measurable criteria for the designation, an operator that meets one of the specified criteria related to grant funding or selection by a district school board in the turnaround process may be designated as a high-impact operator. After the SBE has adopted measurable criteria, an entity may be designated as a high-impact school operator if the entity meets the specified criteria or is selected by a district school board in a turnaround process.

[23] The bill defines persistently low-performing school by cross reference to section 1008.33(3)(c), F.S. Pursuant to the definition specified in CS/CS/SB 1552, a persistently low-performing school is a turnaround school, a school that has earned a grade of "F" or two consecutive grades below a "C," that has been either closed by the state or is persistently, for more than 3 consecutive years, unable to improve to a grade of "C."

If the operator seeks the renewal of its status, such renewal must be based solely on the academic and financial performance of all schools established by the operator in the state since its initial designation and the operator's material compliance with the terms of its performance-based agreement.

High-Impact Schools (Section 1)

A high-impact school operator may submit a notice of intent to open a high-impact school to the school district in which a persistently low-performing school has been identified by the SBE.

Notice of Intent

The notice of intent must include:
- An academic focus and plan;
- A financial plan;
- Goals and objectives for increasing student achievement for the students from any persistently low-performing school and students from low-income families;
- A completed or planned community outreach plan;
- The organizational history of success in working with students with similar demographics;
- The grade levels to be served and enrollment projections;
- The proposed location or geographic area proposed for the school and its proximity to the persistently low-performing school; and
- A staffing plan.

Such information may assist district school boards to make informed decisions to improve student performance outcomes.

A school district with a school that is designated, or is likely to be designated, as a persistently low-performing school during the 2017-2018 school year may, with the approval of the SBE contingent on its determination that the school is likely to improve to a grade of "C" or higher during the 2018-2019 school year, implement a new turnaround option specified in law. In the absence of SBE approval, a school district must enter into a performance-based agreement with a high-impact school operator, or may relinquish the district's authority to the SBE to enter into a performance-based agreement with a high-impact school operator, to open one or more high-impact schools.

Performance-Based Agreement

Section 1 also specifies that the performance-based agreement entered into with a high-impact school operator must include the following components:
- The notice of intent, which must be incorporated by reference and attached to the agreement.
- The location or geographic area proposed for the high-impact school and its proximity to the persistently low-performing school.
- An enumeration of the grades to be served in each year of the agreement and whether the school will serve children in the school readiness or prekindergarten programs.
- A plan of action and specific milestones for student recruitment and the enrollment of students from persistently low-performing schools, including enrollment preferences and

procedures for conducting transparent admissions lotteries that are open to the public. However, the bill specifies that enrollment preference must be given to students who are attending, or are assigned to attend, a low-performing school. Moreover, if the high-impact school's total enrollment consists of at least 60 percent of students who were attending, or were assigned to attend, a persistently low-performing school, students attending the high-impact school are exempt, to the extent permitted by federal grant requirements, from any enrollment lottery.

- A delineation of the current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used.
- A description of the methods of involving parents and expected levels for such involvement.
- The grounds for termination, including failure to meet the requirements for student performance established in the performance-based agreement, generally accepted standards of fiscal management, or material violation of terms of the agreement. The nonrenewal or termination of a performance-based agreement must comply with the requirements specified in law for charter schools.
- A provision allowing the high-impact school operator to open additional schools to serve students enrolled in or zoned for a persistently low-performing school if the high-impact school operator maintains its status as a high-impact school operator.
- A provision establishing the initial term as 3 years. The agreement must be renewed, upon the request of the high-impact school operator, unless the school fails to meet the requirements for student performance established in the agreement or generally accepted standards of fiscal management, or the high-impact school operator or its high-impact school materially violates the law or the terms of the agreement.
- A requirement to provide transportation consistent with Florida law. The governing body of the high-impact school may provide transportation through an agreement or contract with the district school board, a private provider, or parents of enrolled students. Transportation may not be a barrier to the equal access for all students residing within a reasonable distance of the school.
- A requirement that any arrangement entered into to borrow or otherwise secure funds from the high-impact school from a source other than the state or a school district must indemnify the state and the school district from any and all liability, including, but not limited to, financial responsibility for the payment of principal or interest.
- A provision specifying that any loans, bonds, or other financial agreements are not obligations of the state or the school district but are obligations of the high-impact school and are payable solely from the sources of funds pledged by such agreement.
- A prohibition on the pledge of credit or taxing power of the state or the school district.

The performance-based agreement may assist with clarifying performance expectations and requirements associated with operating high-impact schools in Florida.

Facilities

Section 1specifies that a high-impact school must use facilities that comply with the Florida Building Code, except for the State Requirements for Educational Facilities. A high-impact school that uses school district facilities is only required to comply with the State Requirements for Educational Facilities if the school district and the high-impact school operator have entered into a mutual management plan for the reasonable maintenance of such facilities. Such mutual

management plan must contain a provision by which the district school board agrees to maintain the school facilities in the same manner as its other public schools within the district. The bill prohibits the local governing authority from adopting or imposing any local building requirements or site-development restrictions, such as parking and site-size criteria, which are addressed by and more stringent than those found in the State Requirements for Educational Facilities of the Florida Building Code.

Section 1 requires a local governing authority to treat high-impact schools equitably in comparison to similar requirements, restrictions, and site planning processes imposed on public schools. The agency having jurisdiction for the inspection of a facility and issuance of a certificate of occupancy or use must be the local municipality, or the county governing authority if in an unincorporated area. If an official or employee of the local governing authority refuses to comply with this paragraph, the aggrieved school or entity has an immediate right to bring an action in circuit court to enforce its rights by injunction. An aggrieved party that receives injunctive relief may be awarded reasonable attorney fees and court costs.

Consistent with Florida law regarding facilities used to house charter schools, the bill provides that any facility, or portion thereof, that is used to house a high-impact school is exempt from ad valorem taxes. Specifically, a library, community service, museum, performing arts, theatre, cinema, church, Florida College System institution, college and university facilities may provide space to high-impact schools within their facilities under their preexisting zoning and land use designations. Similar to current fee exemptions for charter schools, the bill states that high-impact school facilities are exempt from assessments or fees for building permits; fees for building and occupational licenses; impact fees or exactions; service availability fees; and any assessments for special benefits.

Section 1 requires each school district to annually provide to the Florida Department of Education (DOE) a list of all underused, vacant, or surplus facilities owned or operated by the school district by October 1 and permits a high-impact school operator establishing a high-impact school to use a facility identified on this list at no cost or at a mutually agreeable cost, not to exceed fair market value rates. The bill clarifies that a high-impact school operator that uses a facility from this list may not sell or dispose of the facility without the written permission of the school district. For such purposes, "underused, vacant, or surplus facility" is defined as an entire facility or portion that is not fully used or is used irregularly or intermittently by the school district for instructional or program use.

Funding

Section 1 provides that high-impact schools must receive priority in the DOE's Public Charter School Grant Program competitions. The bill also specifies that high-impact schools are considered charter schools for purposes of charter school capital outlay funding, except that such funds may not be used to purchase real property or for the construction of school facilities.

This section authorizes funding for high-impact schools to be provided in the General Appropriations Act to support the following eligible expenditures:

- Preparing teachers, school leaders, and specialized instructional support personnel, including costs associated with providing professional development and hiring and compensating

teachers, school leaders, and specialized instructional support personnel for services beyond the school day and year.
- Acquiring supplies, training, equipment, and educational materials, including developing and acquiring instructional materials.
- Providing one-time startup costs associated with providing transportation to students to and from the high-impact school.
- Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.
- Providing funds to cover the nonvoted ad valorem millage that would otherwise be required for schools and the required local effort funds when the SBE enters into an agreement with a high-impact school operator.

Additionally, section 1 states that if a high-impact school is not renewed or is terminated, any unencumbered funds and all equipment and property purchased with the funds must revert to the ownership of the district school board. The reversion of such equipment, property, and furnishings must focus on tangible or irrecoverable costs such as rental or leasing fees, normal maintenance, and limited renovations. Additionally, the reversion of all property secured with grant funds is subject to the complete satisfaction of al lawful liens or encumbrances.

Statutory Flexibilities (Section 1)

Section 1 provides the following statutory flexibilities to high-impact school operators and high-impact schools:
- A high-impact school may be designated by the SBE as a local education agency, if requested, for the purposes of receiving federal funds. A high-impact school that is designated as a local education agency accepts the full responsibility for all local education agency requirements and the schools for which the high-impact school will perform local education agency responsibilities. Students enrolled in a school established by a high-impact school operator designated as a local educational agency are not eligible students for purposes of calculating the district grade.
- For the purposes of tort liability, the high-impact school operator, the high-impact school, and its employees or agents are governed by the waiver of sovereign immunity contained in Florida law.[24] The bill specifies that the school district sponsor is not liable for civil damages under state law for the employment actions or personal injury, property damage, or death resulting from an act or omission of a high-impact school operator, the high-impact school, or its employees or agents.
- A high-impact school may be either a public or private employer. As a public employer, the school may participate in the Florida Retirement System upon application and approval as a covered group. If a high-impact school participates in the Florida Retirement System, the high-impact school's employees must be compulsory members.
- A high-impact school operator may employ school administrators and instructional personnel who do not meet certain statutory requirements if they are not ineligible for such employment under Florida law.
- Compliance with maximum class size requirements must be calculated as the average at the school level for high-impact schools.

[24] Section 768.28, F.S.

- High-impact schools operated by a high-impact school operator are exempt from the school code and all district school board policies. However, a high-impact school operator must comply with provisions of the school code related to:
  - The student assessment program and school grading system.
  - Student progression and graduation.
  - The provision of services to students with disabilities.
  - Civil rights, including s. 1000.05, F.S., related to discrimination.
  - Student health, safety, and welfare.
  - Public meetings and records, public inspection, and criminal and civil penalties pursuant to Florida law. The governing board of a high-impact school must hold at least two public meetings per school year in the school district in which the high-impact school is located.
  - Public records pursuant to Florida law.
  - The code of ethics for public officers and employees.

SBE Authority and Obligations (Section 1)

Section 1 establishes certain responsibilities for the SBE related to high-impact schools and high-impact school operators. Specifically, this section requires the SBE to:

- Publish an annual list of persistently low-performing schools after the release of preliminary school grades.
- Adopt a standard notice of intent and performance-based agreement that must be used by high-impact school operators and district school boards to eliminate regulatory and bureaucratic barriers that delay access to high-quality schools for students in persistently low-performing schools.
- Resolve disputes between a high-impact school operator and a school district arising from a performance-based agreement or a contract between a charter operator and a school district under the SBE's oversight and enforcement authority.
- Provide students in persistently low-performing schools with a public school that meets accountability standards. Subject to the authorities and approvals created in this bill, the SBE is authorized to enter into a performance-based agreement with a high-impact school operator to establish a high-impact school. Upon the SBE entering into a performance-based agreement with a high-impact school operator, the school district must transfer the proportionate share of state funds allocated from the Florida Education Finance Program.
- Adopt rules to implement the high-impact school operator provisions.

The establishment of the high-impact school operator designation may result in the creation of high-impact schools to serve students currently enrolled in persistently low-performing schools.

Revolving Loan Program (Section 2)

Section 2 creates the High-Impact Schools Revolving Loan Program within the Department of Education to provide assistance to a high-impact operator to meet school building construction needs and pay for expenses related to the startup of a new high-impact school. The program must consist of funds appropriated by the Legislature, money received from the repayment of loans made from the program, and interest earned. Funds provided through the program cannot exceed 25 percent of the total cost of the project, which is calculated based on 80 of the cost per student station multiplied by the capacity of the facility.

Section 2 permits the DOE to contract with a third-party administrator to administer the program. If the DOE contracts with a third-party administrator, funds must be granted to the administrator to create a revolving loan fund for the purpose of financing projects that meet specified criteria. The third-party administrator is required to annually report to the DOE. The bill requires the DOE to administer the program until a third-party administrator is selected.

Section 2 provides that high-impact school operators that are designated as such by the SBE and that have executed a performance-based agreement to operate a high-impact school must be provided a loan to support the performance-based contract components of the high-impact school. The DOE must post on the DOE's website the projects that have received loans, the geographic distribution of the projects, the status of the projects, the costs of the program, and the student outcomes for students enrolled in the high-impact school receiving funds.

All repayments of principal and interest must be returned to the loan fund and made available for loans to other applicants. Interest on loans provided in this program may be used to defray the costs of administration and must be the lower of the rate paid on money held in the fund or 50 percent of the rate authorized in law.[25]

The creation of the high-impact schools revolving loan program within the DOE may assist and provide incentive to high-impact school operators to open high-impact schools to serve students enrolled in persistently low-performing schools. The number of high-impact schools that may open is indeterminate.

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.

[25] Section 215.84, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures. Funding for high impact schools is subject to appropriation in the General Appropriations Act.

The bill provides that high-impact schools opened by high-impact school operators will be eligible for charter school capital outlay, notwithstanding the statutory requirements. It is not known how many such schools will be opened under the bill and will be eligible for charter school capital outlay funding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates sections the following sections of the Florida Statutes: 1001.292 and 1002.333.

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 25, 2017:
The committee substitute:

- Defines high-impact school operators, high-impact schools and persistently low-performing schools.
- Specifies the authority and responsibility of school districts, high-impact operators, high-impact schools and the State Board of Education with respect to high-impact school operators and high-impact schools.
- Outlines the State Board of Education's role and responsibility regarding the oversight and implementation of the high-impact school and high-impact operator requirements.
- Establishes a revolving loan program to assist high-impact operators meet school building construction needs, pay for expenses related to the start-up of a new high-impact school, and support the performance-based contract components of high-impact schools.

CS by Education on April 17, 2017:

The committee substitute assigns a new section of law to the High-Impact Charter Management Organization provisions in the bill.

B. Amendments:

None.

406464

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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	.	
	.	

The Committee on Appropriations (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 1002.333, Florida Statutes, is created to read:

1002.333 High-impact school; high-impact school operator.—

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

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(a) "High-impact school operator" means an entity identified by the department pursuant to subsection (2). The term does not include a for-profit entity.

(b) "Persistently low-performing school" means a school defined pursuant to s. 1008.33(3)(c).

(c) "High-impact school" means a full-time public school operated by a high-impact school operator which primarily serves students who were attending, or were assigned to attend, a persistently low-performing school and who comprise at least 60 percent of its total enrollment; which is located in the attendance zone of a persistently low-performing school; and which is a Title I eligible school. The term does not include a part-time school or a virtual charter school.

(2) HIGH-IMPACT SCHOOL OPERATOR.—A high-impact school operator is a nonprofit organization with tax exempt status under s. 501(c)(3) of the Internal Revenue Code which operates three or more charter schools that serve students in grades K-12 in Florida or other states has a record of serving students from low-income families, and is designated by the State Board of Education as a high-impact school operator based on a determination that it meets at least one of the following requirements:

(a) The past performance of the high-impact school operator meets or exceeds the following criteria:

1. The achievement of enrolled students exceeds the district and state averages of the states in which the operator's schools operate;

2. The average college attendance rate at all schools currently operated by the operator exceeds 80 percent, if such

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data is available;

3. The percentage of students eligible for a free or reduced price lunch under the National School Lunch Act enrolled at all schools currently operated by the operator exceeds 70 percent;

4. The operator is in good standing with the authorizer in each state in which it operates;

5. The audited financial statements of the operator are free of material exceptions and going concern issues; and

6. Other outcome measures as determined by the State Board of Education.

(b) The operator was awarded a United States Department of Education Charter School Program grant for Replication and Expansion of High-Quality Charter Schools within the preceding 3 years before applying to be a high-impact school operator.

(c) The operator receives funding through the National Fund or a Regional Fund of the Charter School Growth Fund to accelerate the growth of the nation's best charter schools.

(d) The operator is selected by a district school board in accordance with s. 1008.33.

An entity that meets the requirements of paragraph (b), paragraph (c), or paragraph (d) before the adoption by the state board of measurable criteria pursuant to paragraph (a) shall be designated as a high-impact school operator. After the adoption of the measurable criteria, an entity shall be designated as a high-impact school operator if it meets the criteria or is selected by a district school board in accordance with s. 1008.33.

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(3) DESIGNATION OF HIGH-IMPACT SCHOOL OPERATOR.—Initial status as a high-impact school operator is valid for 5 years after the opening of a high-impact school. If a high-impact school operator seeks the renewal of its status, such renewal shall solely be based upon the academic and financial performance of all schools established by the operator in the state since its initial designation and the operator's material compliance with the terms of its performance-based agreement established pursuant to subsection (5).

(4) ESTABLISHMENT OF HIGH-IMPACT SCHOOLS.—A high-impact school operator may submit a notice of intent to open a high-impact school to the school district in which a persistently low-performing school has been identified by the State Board of Education pursuant to subsection (9).

(a) The notice of intent must include:

1. An academic focus and plan;

2. A financial plan;

3. Goals and objectives for increasing student achievement for the students from any persistently low-performing school and students from low-income families;

4. A completed or planned community outreach plan;

5. The organizational history of success in working with students with similar demographics;

6. The grade levels to be served and enrollment projections;

7. The proposed location or geographic area proposed for the school and its proximity to the persistently low-performing school; and

8. A staffing plan.

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(b) A school district with a school that is designated, or is likely to be designated, as a persistently low-performing school during the 2017-2018 school year may, with the approval of the State Board of Education contingent on its determination that the school will likely improve to a grade of "C" or higher during the 2018-2019 school year, implement a new turnaround option specified under s. 1008.33(4). Absent the approval of the state board, a school district must enter into a performance-based agreement with a high-impact operator, or may relinquish authority to the state board to enter into a performance-based agreement with a high-impact school operator, to open one or more high-impact schools.

(5) PERFORMANCE-BASED AGREEMENT.—The performance-based agreement must include all of the following components:

(a) The notice of intent, which is incorporated by reference and attached to the agreement.

(b) The location or geographic area proposed for the high-impact school and its proximity to the persistently low-performing school.

(c) An enumeration of the grades to be served in each year of the agreement and whether the school will serve children in the school readiness or prekindergarten programs.

(d) A plan of action and specific milestones for student recruitment and the enrollment of students from persistently low-performing schools, including enrollment preferences and procedures for conducting transparent admissions lotteries that are open to the public; however, enrollment preference must be given to students who are attending, or are assigned to attend, a persistently low-performing school. If the high-impact

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school's total enrollment consists of at least 60 percent of students who were attending, or were assigned to attend, a persistently low-performing school, students attending the high-impact school are exempt, to the extent permitted by federal grant requirements, from any enrollment lottery.

(e) A delineation of the current incoming baseline standard of student academic achievement, the outcomes to be achieved, and the method of measurement that will be used.

(f) A description of the methods of involving parents and expected levels for such involvement.

(g) The grounds for termination, including failure to meet the requirements for student performance established pursuant to paragraph (e), generally accepted standards of fiscal management, or material violation of terms of the agreement. The nonrenewal or termination of a performance-based agreement must comply with the requirements of s. 1002.33(8).

(h) A provision allowing the high-impact school operator to open additional schools to serve students enrolled in or zoned for a persistently low-performing school if the high-impact school operator maintains its status under subsection (3).

(i) A provision establishing the initial term as 5 years. The agreement shall be renewed, upon the request of the high-impact school operator, unless the school fails to meet the requirements for student performance established pursuant to paragraph (e) or generally accepted standards of fiscal management, or the high-impact school operator or its high-impact school materially violates the law or the terms of the agreement.

(j) A requirement to provide transportation consistent with

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the requirements of ss. 1006.21-1006.27 and s. 1012.45. The governing body of the high-impact school may provide transportation through an agreement or contract with the district school board, a private provider, or parents of enrolled students. Transportation may not be a barrier to equal access for all students residing within a reasonable distance of the school.

(k) A requirement that any arrangement entered into to borrow or otherwise secure funds for the high-impact school from a source other than the state or a school district shall indemnify the state and the school district from any and all liability, including, but not limited to, financial responsibility for the payment of the principal or interest.

(l) A provision that any loans, bonds, or other financial agreements are not obligations of the state or the school district but are obligations of the high-impact school and are payable solely from the sources of funds pledged by such agreement.

(m) A prohibition on the pledge of credit or taxing power of the state or the school district.

(6) AUTHORIZED FLEXIBILITIES.—

(a) A high-impact school may be designated by the State Board of Education as a local education agency, if requested, for the purposes of receiving federal funds and, in doing so, accepts the full responsibility for all local education agency requirements and the schools for which it will perform local education agency responsibilities. Students enrolled in a school established by a high-impact school operator designated as a local educational agency are not eligible students for purposes

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of calculating the district grade pursuant to s. 1008.34(5).

(b) For the purposes of tort liability, the high-impact school operator, the high-impact school, and its employees or agents shall be governed by s. 768.28. The school district sponsor is not liable for civil damages under state law for the employment actions or personal injury, property damage, or death resulting from an act or omission of a high-impact school operator, the high-impact school, or its employees or agents.

(c) A high-impact school may be either a private or a public employer. As a public employer, the high-impact school may participate in the Florida Retirement System upon application and approval as a covered group under s. 121.021(34). If a high-impact school participates in the Florida Retirement System, the high-impact school's employees shall be compulsory members of the Florida Retirement System.

(d) A high-impact school operator may employ school administrators and instructional personnel who do not meet the requirements of s. 1012.56 if the school administrators and instructional personnel are not ineligible for such employment under s. 1012.315.

(e) Compliance with s. 1003.03 shall be calculated as the average at the school level.

(f) High-impact schools operated by a high-impact school operator shall be exempt from chapters 1000-1013 and all school board policies. However, a high-impact school operator shall be in compliance with the laws in chapters 1000-1013 relating to:

1. The student assessment program and school grading system;

2. Student progression and graduation;

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3. The provision of services to students with disabilities;

4. Civil rights, including s. 1000.05, relating to discrimination;

5. Student health, safety, and welfare;

6. Public meetings and records, public inspection, and criminal and civil penalties pursuant to s. 286.011. The governing board of a high-impact school must hold at least two public meetings per school year in the school district in which the high-impact school is located. Any other meetings of the governing board may be held in accordance with s. 120.54(2)(b)2.;

7. Public records pursuant to chapter 119; and

8. The code of ethics for public officers and employees pursuant to ss. 112.313(2), (3), (7), and (12) and 112.3143(3).

(7) FACILITIES.—

(a) A high-impact school shall use facilities that comply with the Florida Building Code, except for the State Requirements for Educational Facilities. A high-impact school that uses school district facilities must comply with the State Requirements for Educational Facilities only if the school district and the high-impact school operator have entered into a mutual management plan for the reasonable maintenance of such facilities. The mutual management plan shall contain a provision by which the district school board agrees to maintain the school facilities in the same manner as its other public schools within the district. The local governing authority shall not adopt or impose any local building requirements or site-development restrictions, such as parking and site-size criteria, which are addressed by and more stringent than those found in the State

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Requirements for Educational Facilities of the Florida Building Code. A local governing authority must treat high-impact schools equitably in comparison to similar requirements, restrictions, and site planning processes imposed upon public schools. The agency having jurisdiction for inspection of a facility and issuance of a certificate of occupancy or use shall be the local municipality or, if in an unincorporated area, the county governing authority. If an official or employee of the local governing authority refuses to comply with this paragraph, the aggrieved school or entity has an immediate right to bring an action in circuit court to enforce its rights by injunction. An aggrieved party that receives injunctive relief may be awarded reasonable attorney fees and court costs.

(b) Any facility, or portion thereof, used to house a high-impact school shall be exempt from ad valorem taxes pursuant to s. 196.1983. Library, community service, museum, performing arts, theatre, cinema, church, Florida College System institution, college, and university facilities may provide space to high-impact schools within their facilities under their preexisting zoning and land use designations.

(c) High-impact school facilities are exempt from assessments of fees for building permits, except as provided in s. 553.80; fees for building and occupational licenses; impact fees or exactions; service availability fees; and assessments for special benefits.

(d) No later than October 1, each school district shall annually provide to the department a list of all underused, vacant, or surplus facilities owned or operated by the school district. A high-impact school operator establishing a high-

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impact school may use an educational facility identified in this paragraph at no cost or at a mutually agreeable cost not to exceed fair market value rates. A high-impact school operator using a facility pursuant to this paragraph may not sell or dispose of such facility without the written permission of the school district. For purposes of this paragraph, "underused, vacant, or surplus facility" means an entire facility or portion thereof which is not fully used or is used irregularly or intermittently by the school district for instructional or program use.

(8) FUNDING.—

(a) High-impact schools shall be funded in accordance with s. 1002.33(17).

(b) High-impact schools shall receive priority in the department's Public Charter School Grant Program competitions.

(c) High-impact schools shall be considered charter schools for purposes of s. 1013.62, except charter capital outlay may not be used to purchase real property or for the construction of school facilities.

(d) Funding for high-impact schools may be provided in the General Appropriations Act to support the following eligible expenditures:

1. Preparing teachers, school leaders, and specialized instructional support personnel, including costs associated with:

a. Providing professional development; and

b. Hiring and compensating teachers, school leaders, and specialized instructional support personnel for services beyond the school day and year.

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2. Acquiring supplies, training, equipment, and educational materials, including developing and acquiring instructional materials.

3. Providing one-time startup costs associated with providing transportation to students to and from the high-impact school.

4. Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.

5. Providing funds to cover the nonvoted ad valorem millage that would otherwise be required for schools and the required local effort funds calculated pursuant to s. 1011.62 when the State Board of Education enters into an agreement with a high-impact school operator pursuant to subsection (5).

(e) If a high-impact school is not renewed or is terminated, any unencumbered funds and all equipment and property purchased with the funds shall revert to the ownership of the state. The reversion of such equipment, property, and furnishings shall focus on tangible or irrecoverable costs such as rental or leasing fees, normal maintenance, and limited renovations. The reversion of all property secured with grant funds is subject to the complete satisfaction of all lawful liens or encumbrances.

(9) STATE BOARD OF EDUCATION AUTHORITY AND OBLIGATIONS.—Pursuant to Art. IX of the State Constitution, which prescribes the duty of the State Board of Education to supervise the public school system, the State Board of Education shall:

(a) Publish an annual list of persistently low-performing schools after the release of preliminary school grades.

(b) Adopt a standard notice of intent and performance-based

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agreement that must be used by high-impact school operators and district school boards to eliminate regulatory and bureaucratic barriers that delay access to high-quality schools for students in persistently low-performing schools.

(c) Resolve disputes between a high-impact school operator and a school district arising from a performance-based agreement or a contract between a charter operator and a school district under the board's oversight and enforcement authority and the requirements of s. 1008.33.

(d) Provide students in persistently low-performing schools with a public school that meets accountability standards. Subject to the authorities and approvals specified under paragraph (4)(b), the State Board of Education may enter into a performance-based agreement with a high-impact school operator to establish a high-impact school. Upon the State Board of Education entering into a performance-based agreement with a high-impact school operator, the school district shall transfer to the high-impact school the proportionate share of state funds allocated from the Florida Education Finance Program.

(10) RULES.—The State Board of Education shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 2. Section 1001.292, Florida Statutes, is created to read:

1001.292 High-impact Schools Revolving Loan Program.—

(1) The High-impact Schools Revolving Loan Program is established within the Department of Education to provide assistance to a high-impact school operator, as defined in s. 1002.333, to meet school building construction needs and pay for expenses related to the startup of a new high-impact school. The

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program shall consist of funds appropriated by the Legislature, money received from the repayment of loans made from the program, and interest earned.

(2) Funds provided pursuant to this section may not exceed 25 percent of the total cost of the project, which shall be calculated based on 80 percent of the cost per student station established by s. 1013.64(6)(b) multiplied by the capacity of the facility.

(3) The department may contract with a third-party administrator to administer the program. If the department contracts with a third-party administrator, funds shall be granted to the third-party administrator to create a revolving loan fund for the purpose of financing projects that meet the requirements of subsection (4). The third-party administrator shall report to the department annually. The department shall continue to administer the program until a third-party administrator is selected.

(4) High-impact school operators that have been designated by the State Board of Education and have executed a performance-based agreement pursuant to s. 1002.333 shall be provided a loan up to the amount provided in subsection (2) to support the performance-based contract components of high-impact schools, as defined in s. 1002.333(1).

(5) The department shall post on its website the projects that have received loans, the geographic distribution of the projects, the status of the projects, the costs of the program, and student outcomes for students enrolled in the high-impact school receiving funds.

(6) All repayments of principal and interest shall be

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returned to the loan fund and made available for loans to other applicants.

(7) Interest on loans provided under this program may be used to defray the costs of administration and shall be the lower of:

(a) The rate paid on moneys held in the fund; or

(b) A rate equal to 50 percent of the rate authorized under s. 215.84.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to K-12 public schools; creating s. 1002.333, F.S., relating to high-impact schools and high-impact school operators; defining terms; providing eligibility criteria for high-impact school operators; providing for the designation and redesignation of a high-impact school operator; authorizing high-impact school operators to establish high-impact schools in specified areas; providing the process for the establishment of a high-impact school; providing the requirements for a performance-based agreement; authorizing the State Board of Education to designate a high-impact school as a local education agency; providing that a school district sponsor is not liable for specified damages; providing that a

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high-impact school may be a private or public employer; authorizing a high-impact school to participate in the Florida Retirement System; authorizing a high-impact school operator to employ certain staff; providing specific statutory exemptions for high-impact schools; providing requirements for facilities used by high-impact schools; requiring districts to annually provide a list of specified property to the Department of Education; requiring that high-impact schools be funded through the Florida Education Finance Program; establishing additional funding sources and guidelines for eligible expenditures; providing authority and obligations of the State Board of Education; providing a mechanism for the resolution of disputes; providing for rulemaking; creating s. 1001.292, F.S.; establishing the High-impact Schools Revolving Loan Program; providing criteria for administration of the program; providing an effective date.

740332

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (406464)

Delete lines 68 - 145
and insert:
status as a high-impact school operator is valid for 3 years after the opening of a high-impact school. If a high-impact school operator seeks the renewal of its status, such renewal shall solely be based upon the academic and financial performance of all schools established by the operator in the state since its initial designation and the operator's material

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compliance with the terms of its performance-based agreement established pursuant to subsection (5).

(4) ESTABLISHMENT OF HIGH-IMPACT SCHOOLS.—A high-impact school operator may submit a notice of intent to open a high-impact school to the school district in which a persistently low-performing school has been identified by the State Board of Education pursuant to subsection (9).

(a) The notice of intent must include:

1. An academic focus and plan;

2. A financial plan;

3. Goals and objectives for increasing student achievement for the students from any persistently low-performing school and students from low-income families;

4. A completed or planned community outreach plan;

5. The organizational history of success in working with students with similar demographics;

6. The grade levels to be served and enrollment projections;

7. The proposed location or geographic area proposed for the school and its proximity to the persistently low-performing school; and

8. A staffing plan.

(b) A school district with a school that is designated, or is likely to be designated, as a persistently low-performing school during the 2017-2018 school year may, with the approval of the State Board of Education contingent on its determination that the school will likely improve to a grade of "C" or higher during the 2018-2019 school year, implement a new turnaround option specified under s. 1008.33(4). Absent the approval of the

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state board, a school district must enter into a performance-based agreement with a high-impact operator, or may relinquish authority to the state board to enter into a performance-based agreement with a high-impact school operator, to open one or more high-impact schools.

(5) PERFORMANCE-BASED AGREEMENT.—The performance-based agreement must include all of the following components:

(a) The notice of intent, which is incorporated by reference and attached to the agreement.

(b) The location or geographic area proposed for the high-impact school and its proximity to the persistently low-performing school.

(c) An enumeration of the grades to be served in each year of the agreement and whether the school will serve children in the school readiness or prekindergarten programs.

(d) A plan of action and specific milestones for student recruitment and the enrollment of students from persistently low-performing schools, including enrollment preferences and procedures for conducting transparent admissions lotteries that are open to the public; however, enrollment preference must be given to students who are attending, or are assigned to attend, a persistently low-performing school. If the high-impact school's total enrollment consists of at least 60 percent of students who were attending, or were assigned to attend, a persistently low-performing school, students attending the high-impact school are exempt, to the extent permitted by federal grant requirements, from any enrollment lottery.

(e) A delineation of the current incoming baseline standard of student academic achievement, the outcomes to be achieved,

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and the method of measurement that will be used.

(f) A description of the methods of involving parents and expected levels for such involvement.

(g) The grounds for termination, including failure to meet the requirements for student performance established pursuant to paragraph (e), generally accepted standards of fiscal management, or material violation of terms of the agreement. The nonrenewal or termination of a performance-based agreement must comply with the requirements of s. 1002.33(8).

(h) A provision allowing the high-impact school operator to open additional schools to serve students enrolled in or zoned for a persistently low-performing school if the high-impact school operator maintains its status under subsection (3).

(i) A provision establishing the initial term as 3 years.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/25/2017	.	
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The Committee on Appropriations (Montford) recommended the following:

Senate Amendment to Amendment (406464)

Delete line 315
and insert:
of the district school board. The reversion of such equipment, property, and

By the Committee on Education; and Senator Bean

581-03950-17 2017796c1

A bill to be entitled

An act relating to charter schools; amending s. 1002.33, F.S.; revising charter school contract and funding requirements; creating s. 1002.336, F.S.; defining terms; authorizing certain entities to apply for designation as a High-Impact Charter Management Organization; requiring the State Board of Education to adopt rules; providing criteria for an initial and renewal designation; providing that the charter school may receive charter school capital outlay; authorizing certain administrative fees to be waived under certain conditions; requiring the Department of Education to give priority to certain charter schools applying for specified grants; amending s. 1013.62, F.S.; revising the standards that a charter school must meet to be eligible for a funding allocation; providing an effective date.

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

Section 1. Paragraph (n) of subsection (9) and paragraph (c) of subsection (17) of section 1002.33, Florida Statutes, are amended to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(n)1. The director and a representative of the governing board of a charter school that has earned a grade of "D" or "F" pursuant to s. 1008.34 shall appear before the sponsor to present information concerning each contract component having

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noted deficiencies. The director and a representative of the governing board shall submit to the sponsor for approval a school improvement plan to raise student performance. Upon approval by the sponsor, the charter school shall begin implementation of the school improvement plan. The department shall offer technical assistance and training to the charter school and its governing board and establish guidelines for developing, submitting, and approving such plans.

2.a. If a charter school earns three consecutive grades of "D," two consecutive grades of "D" followed by a grade of "F," or two nonconsecutive grades of "F" within a 3-year period, the charter school governing board shall choose one of the following corrective actions:

(I) Contract for educational services to be provided directly to students, instructional personnel, and school administrators, as prescribed in state board rule;

(II) Contract with an outside entity that has a demonstrated record of effectiveness to operate the school;

(III) Reorganize the school under a new director or principal who is authorized to hire new staff; or

(IV) Voluntarily close the charter school.

b. The charter school must implement the corrective action in the school year following receipt of a third consecutive grade of "D," a grade of "F" following two consecutive grades of "D," or a second nonconsecutive grade of "F" within a 3-year period.

c. The sponsor may annually waive a corrective action if it determines that the charter school is likely to improve a letter grade if additional time is provided to implement the

intervention and support strategies prescribed by the school improvement plan. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" is subject to subparagraph 4.

d. A charter school is no longer required to implement a corrective action if it improves by at least one letter grade. However, the charter school must continue to implement strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 5.

e. A charter school implementing a corrective action that does not improve by at least one letter grade after 2 full school years of implementing the corrective action must select a different corrective action. Implementation of the new corrective action must begin in the school year following the implementation period of the existing corrective action, unless the sponsor determines that the charter school is likely to improve a letter grade if additional time is provided to implement the existing corrective action. Notwithstanding this sub-subparagraph, a charter school that earns a second consecutive grade of "F" while implementing a corrective action is subject to subparagraph 4.

3. A charter school with a grade of "D" or "F" which ~~that~~ improves by at least one letter grade must continue to implement the strategies identified in the school improvement plan. The sponsor must annually review implementation of the school improvement plan to monitor the school's continued improvement pursuant to subparagraph 5.

4. A charter school's charter contract is automatically terminated if the school earns two consecutive grades of "F" after all school grade appeals are final unless:

a. The charter school is established to turn around the performance of a district public school pursuant to s. 1008.33(4)(b)3. Such charter schools shall be governed by s. 1008.33;

b. The charter school is designated under s. 1002.336 as a High-Impact Charter Management Organization to serve a critical need area or serves a student population the majority of which resides in a school zone served by a district public school that earned a grade of "F" in the year before the charter school opened and the charter school earns at least a grade of "D" in its third year of operation. The exception provided under this sub-subparagraph does not apply to a charter school in its fourth year of operation and thereafter; or

c. The state board grants the charter school a waiver of termination. The charter school must request the waiver within 15 days after the department's official release of school grades. The state board may waive termination if the charter school demonstrates that the Learning Gains of its students on statewide assessments are comparable to or better than the Learning Gains of similarly situated students enrolled in nearby district public schools. The waiver is valid for 1 year and may only be granted once. Charter schools that have been in operation for more than 5 years are not eligible for a waiver under this sub-subparagraph.

The sponsor shall notify the charter school's governing board,

the charter school principal, and the department in writing when a charter contract is terminated under this subparagraph. The letter of termination must meet the requirements of paragraph (8)(c). A charter terminated under this subparagraph must follow the procedures for dissolution and reversion of public funds pursuant to paragraphs (8)(e)-(g) and (9)(o).

5. The director and a representative of the governing board of a graded charter school that has implemented a school improvement plan under this paragraph shall appear before the sponsor at least once a year to present information regarding the progress of intervention and support strategies implemented by the school pursuant to the school improvement plan and corrective actions, if applicable. The sponsor shall communicate at the meeting, and in writing to the director, the services provided to the school to help the school address its deficiencies.

6. Notwithstanding any provision of this paragraph except sub-subparagraphs 4.a.-c., the sponsor may terminate the charter at any time pursuant to subsection (8).

(17) FUNDING.—Students enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district. Funding for a charter lab school shall be as provided in s. 1002.32.

(c) If the district school board is providing programs or services to students funded by federal funds, any eligible students enrolled in charter schools in the school district shall be provided federal funds for the same level of service provided students in the schools operated by the district school

board. Pursuant to provisions of 20 U.S.C. 8061 s. 10306, all charter schools shall receive all federal funding for which the school is otherwise eligible, including Title I funding, not later than 5 months after the charter school first opens and within 5 months after any subsequent expansion of enrollment. Unless otherwise mutually agreed to by the charter school and its sponsor, and consistent with state and federal rules and regulations governing the use and disbursement of federal funds, the sponsor shall reimburse the charter school on a monthly basis for all invoices submitted by the charter school for federal funds available to the sponsor for the benefit of the charter school, the charter school's students, and the charter school's students as public school students in the school district. Such federal funds include, but are not limited to, Title I, Title II, and Individuals with Disabilities Education Act (IDEA) funds. The department shall provide school districts with technical assistance to ensure the federal funds are allocated to charter schools using an appropriate methodology. To receive timely reimbursement for an invoice, the charter school must submit the invoice to the sponsor at least 30 days before the monthly date of reimbursement set by the sponsor. In order to be reimbursed, any expenditures made by the charter school must comply with all applicable state rules and federal regulations, including, but not limited to, the applicable federal Office of Management and Budget Circulars; the federal Education Department General Administrative Regulations; and program-specific statutes, rules, and regulations. Such funds may not be made available to the charter school until a plan is submitted to the sponsor for approval of the use of the funds in

accordance with applicable federal requirements. The sponsor has 30 days to review and approve any plan submitted pursuant to this paragraph.

Section 2. Section 1002.336, Florida Statutes, is created to read:

1002.336 High-Impact Charter Management Organization.—

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

(a) "Critical need area" means an area designated as such by the Legislature or an area that is served by one or more public schools that are subject to the turnaround options specified in s. 1008.33(4)(b).

(b) "Entity" means a nonprofit organization with tax exempt status under s. 501(c)(3) of the Internal Revenue Code which is authorized by law to operate a public charter school.

(2) An entity that successfully operates a system of charter schools which primarily serves educationally disadvantaged students who are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act, may apply to the State Board of Education for status as a High-Impact Charter Management Organization.

(3) The State Board of Education shall adopt rules prescribing the process and criteria for the initial designation and renewal designation of a High-Impact Charter Management Organization. The criteria for initial designation must include a review of the data from all schools currently and previously operated by the entity during the past 3 years and the comparison of student-level data to the data of similar students in other schools. The initial designation period may not exceed 5 years. The criteria for initial and renewal designation must

include, but need not be limited to, all of the following:

(a) Student demographic and achievement data, including performance on statewide assessments and nationally norm-referenced assessments.

(b) Student attendance, promotion, retention, and graduation rates.

(c) Other student outcome data, such as college attendance rates and completion rates.

(d) Annual finance statements and audits.

(4) An entity that is designated as a High-Impact Charter Management Organization may:

(a) Submit an application to a local school board pursuant to s. 1002.33 to establish and operate charter schools in critical need areas;

(b) Take the actions described in s. 1002.331(2); and

(c) Notwithstanding the criteria in s. 1002.33(25), be designated as a local educational agency for the purpose of receiving federal funds.

(5) Notwithstanding s. 1013.62(1)(a), a charter school operated by a High-Impact Charter Management Organization is eligible to receive charter school capital outlay.

(6) The administrative fee provided for in s. 1002.33(20)(a)2. shall be waived for a charter school established by a High-Impact Charter Management Organization in a critical need area if the entity maintains its status as a High-Impact Charter Management Organization.

(7) The department shall give priority to charter schools operated by a High-Impact Charter Management Organization in the department's Public Charter School Grant Program competitions.

Such priority treatment may be provided only for a new charter school that will operate in a critical need area.

(8) If an entity seeks status renewal, the State Board of Education shall review the academic and financial performance of the charter schools established in critical need areas consistent with subsection (3).

(9) The State Board of Education shall adopt rules under ss. 120.536(1) and 120.54 to administer this section.

Section 3. Paragraph (a) of subsection (1) of section 1013.62, Florida Statutes, is amended to read:

1013.62 Charter schools capital outlay funding.—

(1) In each year in which funds are appropriated for charter school capital outlay purposes, the Commissioner of Education shall allocate the funds among eligible charter schools as specified in this section.

(a) To be eligible for a funding allocation, a charter school must:

1.a. Have been in operation for 2 or more years;

b. Be governed by a governing board established in the state for 3 or more years which operates both charter schools and conversion charter schools within the state;

c. Be an expanded feeder chain of a charter school within the same school district that is currently receiving charter school capital outlay funds;

d. Have been accredited by the Commission on Schools of the Southern Association of Colleges and Schools; or

e. Serve students in facilities that are provided by a business partner for a charter school-in-the-workplace pursuant to s. 1002.33(15)(b).

2. Have an annual audit that does not reveal any of the financial emergency conditions provided in s. 218.503(1) for the most recent fiscal year for which such audit results are available.

~~3. Have satisfactory student achievement based on state accountability standards applicable to the charter school.~~

3.~~4.~~ Have received final approval from its sponsor pursuant to s. 1002.33 for operation during that fiscal year.

4.~~5.~~ Serve students in facilities that are not provided by the charter school's sponsor.

Section 4. 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 19, 2017

I respectfully request that **Senate Bill # 796**, relating to Charter Schools, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

796
Bill Number (if applicable)

406464
Amendment Barcode (if applicable)

Topic High Impact Charter Operators

Name Catherine Baer

Job Title

Address 1421 Woodgate WAY
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 850-345-1114

Email flybaer@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing The Tea Party Network / Common Ground

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 25 2017
Meeting Date

SB 796
Bill Number (if applicable)

406464
Amendment Barcode (if applicable)

Topic Charter Schools

Name Marie-Claire Leman

Job Title

Address 1911 Wahalaw Ct
Street

Tallahassee FL 32301
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Common Ground

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)

April 25 2017
Meeting Date

796
Bill Number (if applicable)

821 780
Amendment Barcode (if applicable)

Topic Charter Schools

Name Marie-Claire Leman

Job Title

Address 1911 Wahalaw
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850 728 7514

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Common Ground

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)

4/25/17
Meeting Date

796
Bill Number (if applicable)

821780
Amendment Barcode (if applicable)

Topic Charter Schools

Name Beth Overholt

Job Title

Address 4130 Faulkner Lane
Street

Tallahassee 32311
City *State* *Zip*

Phone 728-0587

Email overholtbeth@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Opt Out Florida Network

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)

4/25/17
Meeting Date

796
Bill Number (if applicable)

821780
Amendment Barcode (if applicable)

Topic High Impact Charter Operators

Name Catherine Baer

Job Title

Address 1421 Woodgate Way
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 850-345-1114

Email flybaer@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Tea Party Network / Common Ground

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)

4/25/2017
Meeting Date

Topic _____ Bill Number 796 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City *State* *Zip*

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.

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

S-001 (10/20/11)

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

796
Bill Number (if applicable)

Topic High Impact Charter Operators

Amendment Barcode (if applicable)

Name Catherine Baer

Job Title

Address 1421 Woodgate WAY
Street
Tallahassee FL 32308
City *State* *Zip*

Phone 850-345-1114

Email flybaer@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Tea Party Network / Common Ground

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)

4/25/17
Meeting Date

796
Bill Number (if applicable)

Topic High Impact Charter Schools

Amendment Barcode (if applicable)

Name Beth Overholt

Job Title

Address 4130 Faulkner Lane
Street
Tallahassee 32311
City *State* *Zip*

Phone 728-0587

Email overholtbeth2@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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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)

4/25/17
Meeting Date

SB 796
Bill Number (if applicable)

Topic Charter Schools

Amendment Barcode (if applicable)

Name Brittney Hunt

Job Title Policy Director

Address 136 S. Bronough St.
Street

Phone 521-1200

Tall FL 32301
City *State* *Zip*

Email bhunt@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida 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.

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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)

4/25
Meeting Date

7910
Bill Number (if applicable)

Topic Education

Amendment Barcode (if applicable)

Name Kelly Quinteo

Job Title Legislative Advocate

Address 540 Beverly Ct
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 772 204 1792

Email lwvfadvocacy@gmail.com

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.

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)

4-25-17
Meeting Date

796
Bill Number (if applicable)

406464 (Bean)
Amendment Barcode (if applicable)

Topic High Impact Charter

Name Cathy Boehme (Say Bame)

Job Title Legislative Specialist

Address 213 S. Adams St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-224-2800

Email cathy.boehme@flori-deaors

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Education Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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 684
INTRODUCER:	Criminal Justice Committee; and Senator Baxley
SUBJECT:	Internet Identifiers
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	**Fav/CS**
2.	McAuliffe	Sadberry	ACJ	**Recommend: Favorable**
3.	McAuliffe	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 684 revises provisions requiring registered sexual predators and sexual offenders to report Internet identifiers. These revisions include modifying the definition of the term "Internet identifier" and defining the connected terms "social Internet communication" and "application software." A recent Florida federal court found that the current definition of "Internet identifier" is overbroad and vague and requires an individual to either forego protected speech or run the risk of criminal prosecution.

The bill also requires a sexual predator and sexual offender to report each Internet identifier's corresponding website homepage or application software name. The bill also expands third degree felony offenses involving failure to report certain information to include failure to report each Internet identifier's corresponding website homepage or application software name.

The Criminal Justice Impact Conference estimated that the original bill would have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). Nominal changes to the original bill, which do not relate to penalties, should not change this estimate. See Section V. Fiscal Impact.

The bill takes effect upon becoming law.

II. Present Situation:

Registration of Sexual Predators and Sexual Offenders

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes,[1] and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;[2]
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.[3]

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.[4]

[1] Sections 775.21-775.25, 943.043-943.0437, 944.606-944.607, and 985.481-985.4815, F.S.
[2] Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).
[3] Section s. 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.
[4] Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the supervision of the Department of Corrections, also define the term "sexual offender."

Sexual predators and sexual offenders are required to report certain information, including electronic mail addresses[5] and Internet identifiers.[6] The FDLE may provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sexual offender registry to commercial social networking websites[7] or third parties designated by commercial social networking websites.[8] The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and Internet identifiers provided by the FDLE.[9]

Requirements for in-person registration and reregistration are similar for sexual predators and sexual offenders,[10] but the frequency of reregistration may differ.[11] Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under DOC or DJJ supervision, or in residential commitment under the DJJ.[12]

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.[13] Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry webpage.

Florida's registry laws meet minimum requirements of the federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of

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[5] An "electronic mail address" is defined in s. 775.21(2)(g), F.S., as having the same meaning as provided in s. 668.602, F.S. Section 668.602(6), F.S., defines an "electronic mail address" as a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

[6] Requirements to report electronic mail addresses and Internet identifiers and changes in this information are in: s. 775.21(6)(a), (e), and (g) and (8), F.S.; s. 943.0435(2)(a), (4)(e), and (14)(c), F.S.; s. 944.607(4)(a) and (13)(c), F.S.; and s. 985.4815(4)(a) and (13)(b), F.S.

[7] For purpose of s. 943.0437, F.S., the term "commercial social networking website" means a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger. Section 943.0437(1), F.S.

[8] Section 943.0437(2), F.S.

[9] *Id.*

[10] Sexual predator reporting requirements are in s. 775.21(6) and (8), F.S. Sexual offender reporting requirements are in ss. 943.0435(2-4), (7-8), and (14), 944.607(4), (9), and (13), and 985.4815(4), (9), and (13), F.S.

[11] A sexual predator is required to reregister each year during the month of the predator's birthday and during every third month thereafter. Section 775.21(8), F.S. A sexual offender convicted of any listed offense in s. 943.0435(14)(b), F.S., must reregister in the same manner as a sexual predator. Any other sex offender must reregister each year during the month of the offender's birthday and during the sixth month following the offender's birth month. Section 943.0435(14)(a), F.S.

[12] *See* footnote 10.

[13] The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. "About Us" (updated October 1, 2016), Florida Department of Law Enforcement, *available at* http://offender.fdle.state.fl.us/offender/About.jsp (last visited on March 13, 2017). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at a institute of higher education. Members of the public may also check whether an electronic mail address or Internet identifier belongs to a registered sexual offender or sexual predator. Offender searches and other information may be accessed from "Florida Sexual Offenders and Predators," Florida Department of Law Enforcement, *available* at http://offender.fdle.state.fl.us/offender/Search.jsp (last visited on March 13, 2017).

2006 (AWA).[14] The SORNA attempts to make all states' laws uniform with respect to requirements (or minimum standards) that Congress judged to be necessary to be included in states' registry laws. The U.S. Department of Justice (DOJ) maintains the Dru Sjodin National Sex Offender Public Website (NSOPW).[15] States may choose not to substantially implement the SORNA, but the AWA penalizes noncompliance by partially reducing Byrne Justice Assistance Grant funding.[16] The DOJ has determined that Florida has substantially implemented the SORNA.[17]

Preliminary Injunction Precluding Enforcement of the Current Definition of Internet Identifier

As previously noted, sexual predators and sexual offenders are required to report certain information, including Internet identifiers. The requirement to report Internet identifiers was created by the Legislature in 2014.[18] In 2016, the Legislature modified the original definition of "Internet identifier."[19] This modified definition, which was to take effect on October 1, 2016,[20] expanded the original definition to include Internet identifiers associated with a website or URL[21] or software applications.

Section 775.21(2)(j), F.S., provides that an "Internet identifier" includes, but is not limited to, all website uniform resource locators (URLs) and application software, whether mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, personal identification number (PIN), URL, or application

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[14] 42 U.S.C. Sections 16911 *et seq*. The Department of Justice issued guidelines for the implementation of the SORNA. The final guidelines (July 2008) and supplemental guidelines (January 11, 2011) may be accessed at "Guidelines," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, *available at* https://ojp.gov/smart/guidelines.htm (last visited on March 13, 2017).

[15] Offender searches and other information may be accessed from "NSPOW," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, *available at* http://www.nsopw.gov/Core/Portal.aspx (last visited on March 13, 2017).

[16] *Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet*, Bureau of Justice Assistance, U.S. Department of Justice (updated January 1, 2016*) available at* https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=266685 (last visited on March 13, 2017).

[17] "Jurisdictions that have substantially implemented SORNA," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, *available at* http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on March 13, 2017).

[18] Chapter 2014-5, L.O.F.

[19] Chapter 2016-104, L.O.F. (amending s. 775.21(2)(i), F.S., and renumbering it as s. 775.21(2)(j), F.S.). The original definition of "Internet identifier" was all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but did not include a date of birth, social security number, or personal identification number (PIN). Voluntary disclosure by a sexual predator of his or her date of birth, social security number, or PIN as an Internet identifier waived the disclosure exemption in this paragraph for such personal information. Section 775.21(2)(i), F.S. (2014).

[20] *Id*.

[21] "URL stands for Uniform Resource Locator, and is used to specify addresses on the World Wide Web. A URL is the fundamental network identification for any resource connected to the web (e.g., hypertext pages, images, and sound files)." "ARCHIVED: What is a URL?", Indiana University Information Technology Knowledge Base Repository, *available at* https://kb.iu.edu/d/adnz (last visited on March 14, 2017).

software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.[22]

Shortly before the amended definition of "Internet identifier" was slated to take effect, a group of plaintiffs in Florida who had been convicted as sexual offenders filed a lawsuit against the Commissioner of the FDLE in the United States District Court for the Northern District of Florida, Tallahassee Division.[23] The plaintiffs argued that the prior and amended definition of "Internet identifier" violated the First Amendment and raised a vagueness challenge. The plaintiffs also moved for a preliminary injunction, which the court treated as a challenge only to the amended definition.

The court found the current definition is "hopelessly vague, chills speech protected by the First Amendment, and is far broader than necessary to serve the state's legitimate interest in deterring or solving online sex crimes." The court granted the preliminary injunction.

The court stated the definition "sets no outer limit, because the term is expressly 'not limited to' what the definition says. Having jettisoned the ordinary understanding and replaced it with an expressly unlimited description, the definition leaves a sex offender guessing at what must be disclosed." The court also stated that the definition, "at least on many plausible readings, is hopelessly and unnecessarily broad in scope." One of the examples the court cited in its finding was Mr. Doe's digital subscription to a newspaper. Mr. Doe receives an e-mail every morning with the day's headlines and e-mails every day with additional articles or breaking news. The court continued:

> He plainly must register at least the URL for the newspaper, if not the URL for every article the newspaper sends. But the State has absolutely no legitimate interest in requiring a sex offender to register the URL of the newspaper or articles the offender reads. And if Mr. Doe chooses one day to make a comment on an article, he must now figure out whether the same URL is in use, and he must make his identity available to the public. Unlike every other subscriber or member of the public, Mr. Doe cannot comment anonymously. *See White v. Baker*, 696 F. Supp. 2d 1289, 1313 (N.D. Ga. 2010) (holding that enforcement of a registration requirement would irreparably harm a registered sex offender "by chilling his First Amendment right to engage in anonymous free speech").

The order states that the preliminary injunction remains in effect until entry of a final judgment in the case or until otherwise ordered. The injunction prohibits the FDLE Commissioner[24] from

[22] Sections 943.0435(1)(e), 944.607, and 985.4815, F.S., provide that "Internet identifier" has the same meaning as provided in s. 775.21, F.S.

[23] The plaintiffs filed this action against current FDLE Commissioner Richard "Rick" L. Swearingen in his official capacity. Preliminary Injunction, *Doe 1 et al. v. Swearingen, etc*., Case No. 4:16-00501-RH-CAS (N.D. Fla. Sept. 27, 2016) (on file with the Senate Committee on Criminal Justice). All information regarding this case is from this source.

[24] The injunction also binds the Commissioner's "officers, agents, servants, employees, and attorneys - and others in active concert or participation with any of them - who receive actual notice of this injunction by personal service or otherwise."

taking any action based on the current definition of "Internet identifier." However, the injunction does not preclude enforcement of the prior definition.

III. Effect of Proposed Changes:

Section 1 amends s. 775.21, F.S., relating to sexual predator registration. The section modifies the definition of "Internet identifier" in s. 775.21(2)(j), F.S. "Internet identifier" means any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. Internet identifier does not include a date of birth, social security number, personal identification number (PIN), or password. A sexual offender's or sexual predator's use of an Internet identifier that discloses his or her date of birth, social security number, PIN, password, or other information that would reveal the identity of the sexual offender or sexual predator waives the described disclosure exemption described in this paragraph and in s. 119.071(5)(l), F.S.[25]

Connected to the definition of "Internet identifier," s. 775.21(2)(m), F.S., is created, which defines "social Internet communication" as any communication through a commercial social networking website, as defined in s. 943.0437, F.S., or application software. The term does not include any of the following:

- Communication for which the primary purpose is the facilitation of commercial transactions involving goods or services;
- Communication on an Internet website for which the primary purpose of the website is the dissemination of news; or
- Communication with a governmental entity.

For purposes of paragraph (2)(m), the term "application software" is defined as any computer program that is designed to run on a mobile device such as a smartphone or tablet computer, that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users, and that offers a mechanism for communication with other users through a forum, a chatroom, electronic mail, or an instant messenger.

The following provisions of s. 775.21, F.S. are amended or created to require a sexual predator to report each Internet identifier's corresponding website homepage or application software name:

- Section 775.21(6)(a)1., F.S., relating to information a sexual predator is required to report at initial registration.
- Section 775.21(6)(a)1.a., F.S., which is created by the bill, provides that any change to the following that occurs after the sexual predator initially registers must be reported as provided in s. 775.21(6)(g), (i), and (j), F.S.: permanent, temporary, or transient residence; name; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home and cellular telephone numbers; and employment information; and status at an institution of higher education.[26]

[25] A connected bill, SB 686 (2017), creates s. 119.071(5)(1), F.S., which exempts from public disclosure electronic mail addresses and Internet identifiers of sexual predators and sexual offenders which they report pursuant to specified registration statutes, unless otherwise ordered by a court.

[26] Excluding changes to Internet identifier's corresponding website homepage or application software name, changes to all of the other noted information are already reported under current s. 775.21(6)(g), (i), or (j), F.S.

- Section 775.21(6)(e)2., F.S., which requires a sexual predator who is not in the custody or under the supervision of the DOC to report changes in certain information.
- Section 775.21(6)(g)5.a., F.S., which requires a sexual predator to report certain information to: the FDLE through the department's online system or in person with the sheriff's office; or the Department of Corrections or Department of Juvenile Justice, if the sexual predator is in custody or under the supervision of either department. The bill also modifies the current requirement for a sexual predator who is not under custody or supervision to register all electronic mail addresses and Internet identifiers before using them. Under the bill, this sexual predator must register them within 48 hours after using them.
- Section 775.21(6)(g)5.c., F.S., which specifies that FDLE's online system may be accessed by a sexual predator to report changes in certain information.
- Section 775.21(8)(a)1., F.S., which requires a sexual predator at reregistration to report any changes in certain information.

Currently, s. 775.21(6)(k), F.S., provides that the FDLE's sexual predator list, which contains information a sexual predator registers (pursuant to s. 775.21(6)(a)1., F.S.), is a public record. Section 1 specifies that this information is a public record, unless otherwise made exempt or confidential and exempt from public disclosure.

Section 775.21(10)(a), F.S., which provides that it is a third degree felony for a sexual predator to fail to report certain information, is expanded to include the failure to report each Internet identifier's corresponding website homepage or application software name.

Section 1 also makes several technical or conforming changes.

Section 2 amends s. 943.0435, F.S., relating to sexual offender registration. The following provisions of s. 943.0435, F.S., are amended to require a sexual offender to report each Internet identifier's corresponding website homepage or application software name:

- Section 943.0435(2)(a) and (b), F.S., relating to information a sexual offender is required to report at initial registration and changes to that information after initial registration.
- Section 943.0435(4)(e)1., F.S., which requires a sexual offender to report certain information to the FDLE through the department's online system or in person with the sheriff's office; or the Department of Corrections or Department of Juvenile Justice, if the sexual offender is in custody or under the supervision of either department. The bill also modifies the current requirement for a sexual offender who is not under custody or supervision to register all electronic mail addresses and Internet identifiers before using them. Under the bill, this sexual offender must register them within 48 hours after using them.
- Section 943.0435(4)(e)3., F.S., which specifies that FDLE's online system may be accessed by a sexual offender to report changes in certain information.
- Section 943.0435(14)(c)1., F.S., which requires a sexual offender at reregistration to report any changes in certain information.

Section 943.0435(14)(c)4., F.S., which provides that it is a third degree felony for a sexual offender to fail to report certain information, is expanded to include the failure to report each Internet identifier's corresponding website homepage or application software name.

Section 2 of the bill also makes several technical or conforming changes.

Sections 3 through 14 of the bill reenact, respectively, ss. 794.056, 921.0022, 938.085, 943.0437, 944.606, 944.607, 985.481, and 985.4815, F.S., for the purpose of incorporating amendments to ss. 775.21 and 943.0435, F.S., made by the bill.

Section 15 of the bill provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimated that the original bill would have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).[27] Nominal changes to the original bill, which do not relate to penalties, should not change this estimate.

The CJIC states that, per the Department of Corrections, in FY 2015-2016, there were 1,001 (adjusted)[28] offenders sentenced for registration/false information offenses relating to sexual offenders and sexual predators, with 503 (adjusted) of these offenders sentenced to prison (mean sentence length of 40.2 months and an incarceration rate of 60.5 percent

[27] Impact information was provided by staff of the Office of Economic and Demographic Research on March 6, 2017, via e-mail (on file with the Senate Committee on Criminal Justice).

[28] Sentencing data from the DOC is incomplete, which means that the numbers the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

adjusted and 60.4 percent unadjusted). It is unknown how many additional offenders might be added due to proposed changes made by the bill.

The FDLE states that Internet identifiers are to be reported as part of the sexual offender or sexual predator registration requirements pursuant to the federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of 2006, and SORNA guidelines. According to the FDLE, failure to comply with the guideline requirements could result in a 10 percent reduction of funding provided under the Edward Byrne Justice Assistance Grant (JAG) Program.[29]

VI. Technical Deficiencies:

None.

VII. Related Issues:

A connected bill, CS/SB 686 (2017), creates s. 119.071(5)(1), F.S., to exempt from public disclosure electronic mail addresses and Internet identifiers of sexual predators and sexual offenders which they report pursuant to specified registration statutes, unless otherwise ordered by a court.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.21 and 943.0435.

This bill also reenacts sections 794.056, 921.0022, 938.085, 943.0437, 944.606, 944.607, 985.481, and 985.4815, Florida Statutes, for the purpose of incorporating amendments made by the bill to sections 775.21 and 943.0435, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on April 3, 2017:
The committee substitute:

- Redefines "social Internet communication" and defines "application software."
- Provides that the FDLE's sexual predator list, which contains information a sexual predator registers (pursuant to s. 775.21(6)(a)1., F.S.), is a public record, unless otherwise made exempt or confidential and exempt from public disclosure.

B. Amendments:

None.

[29] 2017 FDLE Legislative Bill Analysis (SB 684) (February 9, 2017), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

By the Committee on Criminal Justice; and Senator Baxley

591-03322-17 2017684c1

A bill to be entitled

An act relating to Internet identifiers; amending s. 775.21, F.S.; revising the definition of the term "Internet identifier"; defining the term "social Internet communication"; requiring a sexual predator to register each Internet identifier's corresponding website home page or application software name with the Department of Law Enforcement through the sheriff's office; requiring a sexual predator to report any change to certain information after initial in-person registration in a specified manner; requiring a sexual predator to register all electronic mail addresses, Internet identifiers, and Internet identifiers' corresponding website home pages or application names with the department within 48 hours after using the addresses or identifiers, rather than before using them; providing that the department's sexual predator registration list is a public record, unless otherwise made exempt or confidential and exempt; revising the information that a sexual predator must report to the sheriff's office each year; conforming provisions to change made by the act; making technical changes; amending s. 943.0435, F.S.; requiring a sexual offender, upon initial registration, to report in person at the sheriff's office; requiring the sexual offender to report any change to each Internet identifier's corresponding website home page or application software name in person at the sheriff's office in a specified manner;

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requiring a sexual offender to report any change to certain information after initial in-person registration in a specified manner; requiring a sexual offender to register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website home page or application software name, with a specified period after using these addresses or identifiers, rather than before using them; making technical changes; reenacting ss. 943.0437(2), 944.606(1)(c), 944.607(1)(e), 985.481(1)(c), and 985.4815(1)(e), F.S., relating to the definition of the term "Internet identifier," to incorporate the amendment made to s. 775.21, F.S., in references thereto; reenacting ss. 944.606(3)(a), 944.607(4)(a), (9), and (13)(c), 985.481(3)(a), and 985.4815(4)(a), (9), and (13)(b), F.S., relating to sexual offenders, notification to the Department of Law Enforcement of information on sexual offenders, notification to the department upon release of sexual offenders adjudicated delinquent, and notification to the department of information on juvenile sexual offenders, respectively, to incorporate the amendment made to s. 943.0435, F.S., in references thereto; reenacting ss. 794.056(1), 921.0022(3)(g), and 938.085, F.S., relating to the Rape Crisis Program Trust Fund, the Criminal Punishment Code offense severity ranking chart, and additional costs to fund rape crisis centers, respectively, to incorporate the amendments made to ss. 775.21 and 943.0435, F.S., in

references thereto; providing an effective date.

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

Section 1. Present paragraphs (m), (n), and (o) of subsection (2) of section 775.21, Florida Statutes, are redesignated as paragraphs (n), (o), and (p), respectively, a new paragraph (m) is added to that subsection, paragraph (j) of that subsection is amended, paragraphs (a) and (d) of subsection (4) and paragraph (d) of subsection (5) of that section are republished, paragraphs (a), (e), (g), and (k) of subsection (6) of that section are amended, paragraph (i) of subsection (6) of that section is republished, paragraph (a) of subsection (8) and paragraph (a) of subsection (10) of that section are amended, and paragraph (e) of subsection (10) of that section is republished, to read:

775.21 The Florida Sexual Predators Act.—

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

(j) "Internet identifier" means any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication ~~includes, but is not limited to, all website uniform resource locators (URLs) and application software, whether mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software~~. Internet identifier does not include a date of birth, social

security number, personal identification number (PIN), or password. A sexual offender's or sexual predator's use of an Internet identifier that discloses his or her date of birth, social security number, personal identification number (PIN), password, or other information that would reveal the identity of the sexual offender or sexual predator ~~URL, or application software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier~~ waives the disclosure exemption in this paragraph and in s. 119.071(5)(l) for such personal information.

(m) "Social Internet communication" means any communication through a commercial social networking website, as defined in s. 943.0437, or application software. The term does not include any of the following:

1. Communication for which the primary purpose is the facilitation of commercial transactions involving goods or services;

2. Communication on an Internet website for which the primary purpose of the website is the dissemination of news; or

3. Communication with a governmental entity.

For purposes of this paragraph, the term "application software" means any computer program that is designed to run on a mobile device such as a smartphone or tablet computer, that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users, and that offers a mechanism for communication with other users through a forum, a chatroom, electronic mail, or an instant

messenger.

(4) SEXUAL PREDATOR CRITERIA.—

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a "sexual predator" under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

a. A capital, life, or first degree felony violation, or any attempt thereof, of s. 787.01 or s. 787.02, where the victim is a minor, or s. 794.011, s. 800.04, or s. 847.0145, or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025; s. 827.071; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(d) An offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under chapter 394 shall be designated as a "sexual predator" under subsection (5) and subject to registration under subsection (6) and community and public notification under subsection (7).

(5) SEXUAL PREDATOR DESIGNATION.—An offender is designated as a sexual predator as follows:

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the

person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.—

(a) A sexual predator shall register with the department through the sheriff's office by providing the following information to the department:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; photograph; address of legal residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description,

and dates of any current or known future temporary residence within the state or out of state; ~~all~~ electronic mail addresses; ~~and all~~ Internet identifiers and each Internet identifier's corresponding website home page or application software name ~~required to be provided pursuant to subparagraph (g)5.~~; ~~all~~ home telephone numbers and cellular telephone numbers ~~required to be provided pursuant to subparagraph (g)5.~~; employment information ~~required to be provided pursuant to subparagraph (g)5.~~; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; date and place of each conviction; fingerprints; palm prints; and a brief description of the crime or crimes committed by the offender. A post office box may not be provided in lieu of a physical residential address. The sexual predator shall produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual predator shall also provide information about any professional licenses he or she has.

a. Any change that occurs after the sexual predator registers in person at the sheriff's office as provided in this subparagraph in any of the following information related to the sexual predator must be reported as provided in paragraphs (g), (i), and (j): permanent, temporary, or transient residence; name; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website home page or application software name; home telephone numbers and cellular telephone numbers; employment information; and status at an institution of higher education.

b.~~a.~~ If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

c.~~b.~~ If the sexual predator is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual predator shall also provide to the department ~~pursuant to subparagraph (g)5.~~ the name, address, and county of each institution, including each campus attended, and the sexual predator's enrollment, volunteer, or employment status. The sheriff, the Department of Corrections, or the Department of Juvenile Justice shall promptly notify each institution of higher education of the sexual predator's presence and any change in the sexual predator's enrollment, volunteer, or employment status.

d.~~c.~~ A sexual predator shall report in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

2. Any other information determined necessary by the

department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers when available.

(e)1. If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections or is not in the custody of a private correctional facility, the sexual predator shall register in person:

a. At the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state; and

b. At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.

2. Any change that occurs after the sexual predator registers in person at the sheriff's office as provided in subparagraph 1. in any of the following information related to ~~in~~ the sexual predator must be reported as provided in paragraphs (g), (i), and (j): ~~predator's~~ permanent, temporary, or transient residence; name; vehicles owned; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website home page or application software name; home telephone numbers and cellular telephone numbers; ~~and~~ employment information; and ~~any~~ change in status at an institution of higher education~~, required to be provided pursuant to subparagraph (g)5., after the sexual predator registers in person at the sheriff's office as provided in subparagraph 1. must be accomplished in the manner provided in paragraphs (g), (i), and (j)~~. When a sexual predator registers with the sheriff's office, the sheriff shall take a photograph,

a set of fingerprints, and palm prints of the predator and forward the photographs, palm prints, and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

(g)1. Each time a sexual predator's driver license or identification card is subject to renewal, and, without regard to the status of the predator's driver license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver license office and is subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section. A sexual predator who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in paragraph (f) and this paragraph shall also report any change of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles. The reporting requirements under this

subparagraph do not negate the requirement for a sexual predator to obtain a Florida driver license or identification card as required by this section.

2.a. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator shall provide or update all of the registration information required under paragraph (a). The sexual predator shall provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

b. A sexual predator shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual predator must provide the addresses and locations where he or she maintains a transient residence. Each sheriff's office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this sub-subparagraph. Reporting to the sheriff's office as required by this sub-subparagraph does not exempt registrants from any reregistration

requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this sub-subparagraph. The sheriff's office shall, within 2 business days, electronically submit and update all information provided by the sexual predator to the department.

3. A sexual predator who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the sheriff's office to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. The failure of a sexual predator who maintains a transient residence to report in person to the sheriff's office every 30 days as required by sub-subparagraph 2.b. is punishable as provided in subsection (10).

5.a. A sexual predator shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website home page or application software name, with the department through the department's online system or in person at the sheriff's office within 48

hours after ~~before~~ using such electronic mail addresses and Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website home page or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website home page or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

b. A sexual predator shall register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported in this sub-subparagraph shall be reported within 48 hours after the change.

c. The department shall establish an online system through which sexual predators may securely access, submit, and update all electronic mail addresses; ~~address and~~ Internet identifiers and each Internet identifier's corresponding website home page or application software name; ~~identifier information,~~ home telephone numbers and cellular telephone numbers;~~,~~ employment information;~~,~~ and institution of higher education information.

(i) A sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual predator 21 days before the departure date must be reported to the sheriff's office as soon as possible before departure. The sexual predator shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual predator shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel. The sheriff shall promptly provide to the department the information received from the sexual predator. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual predator's intended residence. The failure of a sexual

predator to provide his or her intended place of residence is punishable as provided in subsection (10).

(k)1. The department is responsible for the online maintenance of current information regarding each registered sexual predator. The department shall maintain hotline access for state, local, and federal law enforcement agencies to obtain instantaneous locator file and offender characteristics information on all released registered sexual predators for purposes of monitoring, tracking, and prosecution. The photograph, palm prints, and fingerprints do not have to be stored in a computerized format.

2. The department's sexual predator registration list, containing the information described in subparagraph (a)1., is a public record, unless otherwise made exempt or confidential and exempt from s. 119.07(1) and s. 24(a) of Art. I of the State Constitution. The department may disseminate this public information by any means deemed appropriate, including operating a toll-free telephone number for this purpose. When the department provides information regarding a registered sexual predator to the public, department personnel shall advise the person making the inquiry that positive identification of a person believed to be a sexual predator cannot be established unless a fingerprint comparison is made, and that it is illegal to use public information regarding a registered sexual predator to facilitate the commission of a crime.

3. The department shall adopt guidelines as necessary regarding the registration of sexual predators and the dissemination of information regarding sexual predators as required by this section.

(8) VERIFICATION.—The department and the Department of Corrections shall implement a system for verifying the addresses of sexual predators. The system must be consistent with the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to such verification or required to be met as a condition for the receipt of federal funds by the state. The Department of Corrections shall verify the addresses of sexual predators who are not incarcerated but who reside in the community under the supervision of the Department of Corrections and shall report to the department any failure by a sexual predator to comply with registration requirements. County and local law enforcement agencies, in conjunction with the department, shall verify the addresses of sexual predators who are not under the care, custody, control, or supervision of the Department of Corrections, and may verify the addresses of sexual predators who are under the care, custody, control, or supervision of the Department of Corrections. Local law enforcement agencies shall report to the department any failure by a sexual predator to comply with registration requirements.

(a) A sexual predator shall report in person each year during the month of the sexual predator's birthday and during every third month thereafter to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. The sheriff's office may determine the appropriate times and days for reporting by the sexual predator, which must be consistent with the reporting requirements of this paragraph. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state including the~~r~~ address, location or description of the transient residences, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses; all ~~or~~ Internet identifiers and each Internet identifier's corresponding website home page or application software name ~~required to be provided pursuant to subparagraph (6)(g)5.~~; all home telephone numbers and cellular telephone numbers ~~required to be provided pursuant to subparagraph (6)(g)5.~~; date and place of any employment ~~required to be provided pursuant to subparagraph (6)(g)5.~~; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual predator shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual predator shall also provide information about any professional licenses he or she has.

2. If the sexual predator is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual predator shall also provide to the department the name, address, and county of each

institution, including each campus attended, and the sexual predator's enrollment, volunteer, or employment status.

3. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

(10) PENALTIES.—

(a) Except as otherwise specifically provided, a sexual predator who fails to register; who fails, after registration, to maintain, acquire, or renew a driver license or an identification card; who fails to provide required location information; who fails to provide~~,~~ electronic mail addresses ~~address information before use~~, Internet identifiers, and each Internet identifier's corresponding website home page or application software name; who fails to provide ~~identifier information before use,~~ all home telephone numbers and cellular telephone numbers, employment information, change in status at an institution of higher education, or change-of-name information; who fails to make a required report in connection with vacating a permanent residence; who fails to reregister as

required; who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence; who knowingly provides false registration information by act or omission; or who otherwise fails, by act or omission, to comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the predator has been provided and advised of his or her statutory obligation to register under subsection (6). A sexual predator's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual predator charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual predator who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

Section 2. Paragraph (e) of subsection (1) of section 943.0435, Florida Statutes, is republished, and subsection (2), paragraph (e) of subsection (4), and paragraph (c) of subsection (14) of that section, are amended to read:

943.0435 Sexual offenders required to register with the department; penalty.—

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

(e) "Internet identifier" has the same meaning as provided in s. 775.21.

(2) Upon initial registration, a sexual offender shall:

(a) Report in person at the sheriff's office:

1. In the county in which the offender establishes or maintains a permanent, temporary, or transient residence within 48 hours after:

a. Establishing permanent, temporary, or transient residence in this state; or

b. Being released from the custody, control, or supervision of the Department of Corrections or from the custody of a private correctional facility; or

2. In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration under this section if the offender is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility.

Any change in the information required to be provided pursuant to paragraph (b), including, but not limited to, any change in the sexual offender's permanent, temporary, or transient residence; name; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website home page or application software name; home telephone numbers and cellular telephone numbers; ~~and~~ employment information; and any change in status at an institution of higher education~~, required to be provided pursuant to paragraph (4)(c),~~ after the sexual

offender reports in person at the sheriff's office must be reported ~~accomplished~~ in the manner provided in subsections (4), (7), and (8).

(b) Provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; fingerprints; palm prints; photograph; employment information ~~required to be provided pursuant to paragraph (4)(c)~~; address of permanent or legal residence or address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state, address, location or description, and dates of any current or known future temporary residence within the state or out of state; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; ~~all~~ home telephone numbers and cellular telephone numbers ~~required to be provided pursuant to paragraph (4)(c)~~; ~~all~~ electronic mail addresses; ~~and all~~ Internet identifiers and each Internet identifier's corresponding website home page or application software name ~~required to be provided pursuant to paragraph (4)(c)~~; date and place of each conviction; and a brief description of the crime or crimes committed by the offender. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

1. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department through the sheriff's office written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department ~~pursuant to paragraph (4)(c)~~ the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status. The sheriff, the Department of Corrections, or the Department of Juvenile Justice shall promptly notify each institution of higher education of the sexual offender's presence and any change in the sexual offender's enrollment, volunteer, or employment status.

3. A sexual offender shall report in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

(c) Provide any other information determined necessary by

the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers, when available.

When a sexual offender reports at the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the offender and forward the photographs, palm prints, and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the sexual offender.

(4)

(e)1. A sexual offender shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website home page or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after ~~before~~ using such electronic mail addresses and Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website home page or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website home page or

application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

2. A sexual offender shall register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported under this subparagraph must be reported within 48 hours after the change.

3. The department shall establish an online system through which sexual offenders may securely access, submit, and update all changes in status to electronic mail addresses; ~~address and~~ Internet identifiers and each Internet identifier's corresponding website home page or application software name; ~~identifier information,~~ home telephone numbers and cellular telephone numbers;~~,~~ employment information;~~,~~ and institution of higher education information.

(14)

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must be consistent with the reporting requirements of this

subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses or Internet identifiers and each Internet identifier's corresponding website home page or application software name ~~required to be provided pursuant to paragraph (4)(c)~~; all home telephone numbers and cellular telephone numbers ~~required to be provided pursuant to paragraph (4)(c)~~; employment information ~~required to be provided pursuant to paragraph (4)(c)~~; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide

to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

4. Any sexual offender who fails to report in person as required at the sheriff's office, who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence, who fails to report all electronic mail addresses and all Internet identifiers<u>, and each Internet identifier's corresponding website home page or application software name</u> ~~before use~~, or who knowingly provides false registration information by act or omission commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, subsection (2) of section 943.0437, Florida

Statutes, is reenacted to read:

943.0437 Commercial social networking websites.—

(2) The department may provide information relating to electronic mail addresses and Internet identifiers, as defined in s. 775.21, maintained as part of the sexual offender registry to commercial social networking websites or third parties designated by commercial social networking websites. The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and Internet identifiers provided by the department.

Section 4. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 944.606, Florida Statutes, is reenacted to read:

944.606 Sexual offenders; notification upon release.—

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

(c) "Internet identifier" has the same meaning as provided in s. 775.21.

Section 5. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 944.607, Florida Statutes, is reenacted to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

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

(e) "Internet identifier" has the same meaning as provided in s. 775.21.

Section 6. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 985.481, Florida Statutes, is reenacted to read:

985.481 Sexual offenders adjudicated delinquent; notification upon release.—

(1) As used in this section:

(c) "Internet identifier" has the same meaning as provided in s. 775.21.

Section 7. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 985.4815, Florida Statutes, is reenacted to read:

985.4815 Notification to Department of Law Enforcement of information on juvenile sexual offenders.—

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

(e) "Internet identifier" has the same meaning as provided in s. 775.21.

Section 8. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 944.606, Florida Statutes, is reenacted to read:

944.606 Sexual offenders; notification upon release.—

(3)(a) The department shall provide information regarding any sexual offender who is being released after serving a period of incarceration for any offense, as follows:

1. The department shall provide: the sexual offender's name, any change in the offender's name by reason of marriage or other legal process, and any alias, if known; the correctional

facility from which the sexual offender is released; the sexual offender's social security number, race, sex, date of birth, height, weight, and hair and eye color; tattoos or other identifying marks; address of any planned permanent residence or temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any known future temporary residence within the state or out of state; date and county of sentence and each crime for which the offender was sentenced; a copy of the offender's fingerprints, palm prints, and a digitized photograph taken within 60 days before release; the date of release of the sexual offender; all electronic mail addresses and all Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); employment information, if known, provided pursuant to s. 943.0435(4)(e); all home telephone numbers and cellular telephone numbers required to be provided pursuant to s. 943.0435(4)(e); information about any professional licenses the offender has, if known; and passport information, if he or she has a passport, and, if he or she is an alien, information about documents establishing his or her immigration status. The department shall notify the Department of Law Enforcement if the sexual offender escapes, absconds, or dies. If the sexual offender is in the custody of a private correctional facility, the facility shall take the digitized photograph of the sexual offender within 60 days before the sexual offender's release and provide this photograph to the Department of Corrections and also place it in the sexual offender's file. If the sexual offender is in the custody of a

local jail, the custodian of the local jail shall register the offender within 3 business days after intake of the offender for any reason and upon release, and shall notify the Department of Law Enforcement of the sexual offender's release and provide to the Department of Law Enforcement the information specified in this paragraph and any information specified in subparagraph 2. that the Department of Law Enforcement requests.

2. The department may provide any other information deemed necessary, including criminal and corrections records, nonprivileged personnel and treatment records, when available.

Section 9. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in references thereto, paragraph (a) of subsection (4), subsection (9), and paragraph (c) of subsection (13) of section 944.607, Florida Statutes, are reenacted to read:

944.607 Notification to Department of Law Enforcement of information on sexual offenders.—

(4) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but is not incarcerated shall register with the Department of Corrections within 3 business days after sentencing for a registrable offense and otherwise provide information as required by this subsection.

(a) The sexual offender shall provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); employment information required to be provided pursuant to s.

943.0435(4)(e); all home telephone numbers and cellular telephone numbers required to be provided pursuant to s. 943.0435(4)(e); the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is under supervision in this state, including any rural route address or post office box; if no permanent or temporary address, any transient residence within the state; and address, location or description, and dates of any current or known future temporary residence within the state or out of state. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has. The Department of Corrections shall verify the address of each sexual offender in the manner described in ss. 775.21 and 943.0435. The department shall report to the Department of Law Enforcement any failure by a sexual predator or sexual offender to comply with registration requirements.

(9) A sexual offender, as described in this section, who is under the supervision of the Department of Corrections but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register and obtain a distinctive driver license or identification card in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register and obtain a distinctive driver license or

identification card as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(9).

(13)

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); all home telephone numbers and cellular telephone numbers required to be provided pursuant to s. 943.0435(4)(e); employment information required to be provided pursuant to s. 943.0435(4)(e); the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The

sexual offender shall also provide information about any professional licenses he or she has.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel or houseboat.

4. Any sexual offender who fails to report in person as required at the sheriff's office, who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence, who fails to report all electronic mail addresses or Internet identifiers before use, or who knowingly provides false registration information by act or omission commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 985.481, Florida Statutes, is reenacted to read:

985.481 Sexual offenders adjudicated delinquent; notification upon release.—

(3)(a) The department shall provide information regarding any sexual offender who is being released after serving a period of residential commitment under the department for any offense, as follows:

1. The department shall provide the sexual offender's name, any change in the offender's name by reason of marriage or other legal process, and any alias, if known; the correctional facility from which the sexual offender is released; the sexual offender's social security number, race, sex, date of birth, height, weight, and hair and eye color; tattoos or other identifying marks; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; address of any planned permanent residence or temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any known future temporary residence within the state or out of state; date and county of disposition and each crime for which there was a disposition; a copy of the offender's fingerprints, palm prints, and a digitized photograph taken within 60 days before release; the date of release of the sexual offender; all home telephone numbers and cellular telephone numbers required to be provided

pursuant to s. 943.0435(4)(e); all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); information about any professional licenses the offender has, if known; and passport information, if he or she has a passport, and, if he or she is an alien, information about documents establishing his or her immigration status. The department shall notify the Department of Law Enforcement if the sexual offender escapes, absconds, or dies. If the sexual offender is in the custody of a private correctional facility, the facility shall take the digitized photograph of the sexual offender within 60 days before the sexual offender's release and also place it in the sexual offender's file. If the sexual offender is in the custody of a local jail, the custodian of the local jail shall register the offender within 3 business days after intake of the offender for any reason and upon release, and shall notify the Department of Law Enforcement of the sexual offender's release and provide to the Department of Law Enforcement the information specified in this subparagraph and any information specified in subparagraph 2. which the Department of Law Enforcement requests.

2. The department may provide any other information considered necessary, including criminal and delinquency records, when available.

Section 11. For the purpose of incorporating the amendment made by this act to section 943.0435, Florida Statutes, in references thereto, paragraph (a) of subsection (4), subsection (9), and paragraph (b) of subsection (13) of section 985.4815, Florida Statutes, are reenacted to read:

985.4815 Notification to Department of Law Enforcement of

information on juvenile sexual offenders.—

(4) A sexual offender, as described in this section, who is under the supervision of the department but who is not committed shall register with the department within 3 business days after adjudication and disposition for a registrable offense and otherwise provide information as required by this subsection.

(a) The sexual offender shall provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; permanent or legal residence and address of temporary residence within the state or out of state while the sexual offender is in the care or custody or under the jurisdiction or supervision of the department in this state, including any rural route address or post office box; if no permanent or temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all home telephone numbers and cellular telephone numbers required to be provided pursuant to s. 943.0435(4)(e); all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); and the name and address of each school attended. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The offender shall also provide information about any professional licenses he or she has. The department shall verify the address of each sexual offender and shall report to the Department of

Law Enforcement any failure by a sexual offender to comply with registration requirements.

(9) A sexual offender, as described in this section, who is under the care, jurisdiction, or supervision of the department but who is not incarcerated shall, in addition to the registration requirements provided in subsection (4), register in the manner provided in s. 943.0435(3), (4), and (5), unless the sexual offender is a sexual predator, in which case he or she shall register as required under s. 775.21. A sexual offender who fails to comply with the requirements of s. 943.0435 is subject to the penalties provided in s. 943.0435(9).

(13)

(b) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; hair and eye color; tattoos or other identifying marks; fingerprints; palm prints; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence; address, location or description, and dates of any current or known future temporary residence within the state or out of state; passport information, if he or she has a passport, and, if he or she is an alien, information about documents establishing his or her immigration status; all home telephone numbers and cellular

telephone numbers required to be provided pursuant to s. 943.0435(4)(e); all electronic mail addresses and Internet identifiers required to be provided pursuant to s. 943.0435(4)(e); name and address of each school attended; employment information required to be provided pursuant to s. 943.0435(4)(e); the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; and photograph. A post office box may not be provided in lieu of a physical residential address. The offender shall also provide information about any professional licenses he or she has.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

4. Any sexual offender who fails to report in person as required at the sheriff's office, who fails to respond to any address verification correspondence from the department within 3 weeks after the date of the correspondence, or who knowingly provides false registration information by act or omission commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

Section 12. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, subsection (1) of section 794.056, Florida Statutes, is reenacted to read:

794.056 Rape Crisis Program Trust Fund.—

(1) The Rape Crisis Program Trust Fund is created within the Department of Health for the purpose of providing funds for rape crisis centers in this state. Trust fund moneys shall be used exclusively for the purpose of providing services for victims of sexual assault. Funds credited to the trust fund consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided in 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); s. 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. 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). Funds credited to the trust fund also shall include revenues provided by law, moneys appropriated by the Legislature, and grants from public or private entities.

Section 13. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, paragraph (g) of subsection (3) of section 921.0022, Florida Statutes, is reenacted to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
458.327(1)	3rd	Practicing medicine without a

		license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a license.

468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(7)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by

		unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.

784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting

		to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age

		or older.
800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law

		enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.

817.034(4)(a)1.	1st	Communications fraud, value greater than $50,000.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
817.611(2)(b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.

825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(3)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $10,000 or more, but less than $50,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs,

			manages, or supervises criminal gang-related activity.
1274			
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
1275			
	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
1276			
	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
1277			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more

			than 25 lbs., less than 2,000 lbs.
1278			
	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
1279			
	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
1280			
	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
1281			
	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
1282			
	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
1283			
	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
1284			
	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than

		200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing

		of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or

		conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a

		digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

Section 14. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references 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. 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 15. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

April 18, 2017

The Honorable Senator Jack Latvala
412 Senate Office Building
Tallahassee, Florida 32399

Dear Chairman Latvala,

I respectfully request you place Senate Bill 684 Internet Identifiers/SB 686 Internet Identifiers Public Records on your next available agenda.

This bill requires sexual offenders and predators to register their internet identifiers and email addresses.

I appreciate your favorable consideration.

Onward & Upward,

Dennis Baxley
Senator, District 12

DKB/dd

cc: Mike Hansen, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@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 25, 2017
Meeting Date

684
Bill Number (if applicable)

Topic Internet Identifiers

Amendment Barcode (if applicable)

Name Chief Jeffrey Chudnow

Job Title Chief of Police

Address 2636 Mitcham Drive
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-219-3631

Email bhoward@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs 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)

25 Apr 17
Meeting Date

604
Bill Number (if applicable)

Topic Internet Identifiers

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall 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 Fla. Smart Justice 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

APPEARANCE RECORD

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

4/25/17
Meeting Date

684
Bill Number (if applicable)

Topic INTERNET IDENTIFIERS

Amendment Barcode (if applicable)

Name JASON JONES

Job Title GENERAL COUNSEL

Address P. O. BOX 1489
Street

TALLAHASSEE FL 32302
City *State* *Zip*

Phone 850 410-7676

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/SB 686
INTRODUCER:	Criminal Justice Committee and Senator Baxley
SUBJECT:	Public Records/Internet Identifiers
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	**Fav/CS**
2.	Kim	Ferrin	GO	**Favorable**
3.	McAuliffe	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 686 exempts electronic mail addresses and Internet identifiers registered by sexual predators or sexual offenders and held by agencies pursuant to specified statutory authority from public disclosure. This exemption applies to records held before, on, or after the effective date of the bill. However, a law enforcement agency is not prohibited from confirming to a member of the public that an electronic mail address or Internet identifier is registered in the Florida Department of Law Enforcement sexual offender and sexual predator registry.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill includes a public necessity statement as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

The Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it creates a new public records exemption.

This bill becomes effective at the same time that SB 684 or similar legislation takes effect.

II. Present Situation:

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes,[1] and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;[2]
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.[3]

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, (the date the modern registry became effective), from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.[4]

Sexual predators and sexual offenders are required to report certain information, including electronic mail addresses[5] and Internet identifiers.[6] The FDLE may provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sexual offender

[1] Sections 775.21-775.25, 943.043-943.0437, 944.606-944.607, and 985.481-985.4815, F.S.

[2] Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

[3] Section s. 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

[4] Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the supervision of the Department of Corrections, also define the term "sexual offender."

[5] An "electronic mail address" is defined in s. 775.21(2)(g), F.S., as having the same meaning as provided in s. 668.602, F.S. Section 668.602(6), F.S., defines an "electronic mail address" as a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

[6] Requirements to report electronic mail addresses and Internet identifiers and changes in this information are in: s. 775.21(6)(a), (e), and (g) and (8), F.S.; s. 943.0435(2)(a), (4)(e), and (14)(c), F.S.; s. 944.607(4)(a) and (13)(c), F.S.; and s. 985.4815(4)(a) and (13)(b), F.S.

registry to commercial social networking websites[7] or third parties designated by commercial social networking websites.[8] The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and Internet identifiers provided by the FDLE.[9]

Requirements for in-person registration and reregistration are similar for sexual predators and sexual offenders,[10] but the frequency of reregistration may differ.[11] Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under DOC or DJJ supervision, or in residential commitment under the DJJ.[12]

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.[13] Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry webpage.

Florida's registry laws meet minimum requirements of the federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of 2006 (AWA).[14] The SORNA attempts to make all states' laws uniform with respect to requirements (or minimum standards) that Congress judged to be necessary to be included in states' registry laws. The U.S. Department of Justice (DOJ) maintains the Dru Sjodin National

[7] For the purpose of s. 943.0437, F.S., the term "commercial social networking website" means a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger. Section 943.0437(1), F.S.
[8] Section 943.0437(2), F.S.
[9] *Id.*
[10] Sexual predator reporting requirements are in s. 775.21(6) and (8), F.S. Sexual offender reporting requirements are in ss. 943.0435(2-4), (7-8), and (14), 944.607(4), (9), and (13), and 985.4815(4), (9), and (13), F.S.
[11] A sexual predator is required to reregister each year during the month of the predator's birthday and during every third month thereafter. Section 775.21(8), F.S. A sexual offender convicted of any listed offense in s. 943.0435(14)(b), F.S., must reregister in the same manner as a sexual predator. Any other sex offender must reregister each year during the month of the offender's birthday and during the sixth month following the offender's birth month. Section 943.0435(14)(a), F.S.
[12] *See* footnote 10.
[13] The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. "About Us" (updated October 1, 2016), Florida Department of Law Enforcement, *available at* http://offender.fdle.state.fl.us/offender/About.jsp (last visited on March 13, 2017). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at a institute of higher education. Members of the public may also check whether an electronic mail address or Internet identifier belongs to a registered sexual offender or sexual predator. Offender searches and other information may be accessed from "Florida Sexual Offenders and Predators," Florida Department of Law Enforcement, *available* at http://offender.fdle.state.fl.us/offender/Search.jsp (last visited on March 13, 2017).
[14] 42 U.S.C. Sections 16911 *et seq.* The Department of Justice issued guidelines for the implementation of the SORNA. The final guidelines (July 2008) and supplemental guidelines (January 11, 2011) may be accessed at "Guidelines," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, *available at* https://ojp.gov/smart/guidelines.htm (last visited on March 13, 2017).

Sex Offender Public Website (NSOPW).[15] States may choose not to substantially implement the SORNA, but the AWA penalizes noncompliance by partially reducing Byrne Justice Assistance Grant funding.[16] The DOJ has determined that Florida has substantially implemented the SORNA.[17]

Preliminary Injunction Precluding Enforcement of the Current Definition of Internet Identifier

As previously noted, sexual predators and sexual offenders are required to report certain information, including Internet identifiers. The requirement to report Internet identifiers was created by the Legislature in 2014.[18] In 2016, the Legislature modified the original definition of "Internet identifier."[19] This modified definition, which was to take effect on October 1, 2016,[20] expanded the original definition to include Internet identifiers associated with a website, URL[21] or software applications.

Section 775.21(2)(j), F.S., provides that an "Internet identifier" includes, but is not limited to, all websites, URLs and application software mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.[22]

Shortly before the amended definition of "Internet identifier" was slated to take effect, a group of plaintiffs in Florida who had been convicted as sexual offenders filed a lawsuit against the

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[15] Offender searches and other information may be accessed from "NSPOW," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, *available at* http://www.nsopw.gov/Core/Portal.aspx (last visited on March 13, 2017).

[16] *Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet*, Bureau of Justice Assistance, U.S. Department of Justice (updated January 1, 2016*) available at* https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=266685 (last visited on March 13, 2017).

[17] "Jurisdictions that have substantially implemented SORNA," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, *available at* http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on March 13, 2017).

[18] Chapter 2014-5, Laws of Fla.

[19] Chapter 2016-104, Laws of Fla, (amending s. 775.21(2)(i), F.S., and renumbering it as s. 775.21(2)(j), F.S.). The original definition of "Internet identifier" was all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but did not include a date of birth, social security number, or PIN. Voluntary disclosure by a sexual predator of his or her date of birth, social security number, or PIN as an Internet identifier waived the disclosure exemption in this paragraph for such personal information. Section 775.21(2)(i), F.S. (2014).

[20] *Id.*

[21] "URL stands for Uniform Resource Locator, and is used to specify addresses on the World Wide Web. A URL is the fundamental network identification for any resource connected to the web (e.g., hypertext pages, images, and sound files)." "ARCHIVED: What is a URL?" Indiana University Information Technology Knowledge Base Repository, *available at* https://kb.iu.edu/d/adnz (last visited on March 14, 2017).

[22] Sections 943.0435(1)(e), 944.607, and 985.4815, F.S., provide that "Internet identifier" has the same meaning as provided in s. 775.21, F.S.

Commissioner of the FDLE in the United States District Court for the Northern District of Florida, Tallahassee Division.[23] The plaintiffs argued that the prior and amended definition of "Internet identifier" violated the First Amendment and raised a vagueness challenge. The plaintiffs also moved for a preliminary injunction, which the court treated as a challenge only to the amended definition.

The court found the current definition is "hopelessly vague, chills speech protected by the First Amendment, and is far broader than necessary to serve the state's legitimate interest in deterring or solving online sex crimes."[24] The court granted the preliminary injunction.

The court stated the definition "sets no outer limit, because the term is expressly 'not limited to' what the definition says. Having jettisoned the ordinary understanding and replaced it with an expressly unlimited description, the definition leaves a sex offender guessing at what must be disclosed."[25] The court also stated that the definition, "at least on many plausible readings, is hopelessly and unnecessarily broad in scope." One of the examples the court cited in its finding was that of a registered sex offender, John Doe's, subscription to a digital newspaper. In the court's illustration, Mr. Doe, receives an e-mail every morning with the day's headlines and e-mails every day with additional articles or breaking news. The court continued:

> He plainly must register at least the URL for the newspaper, if not the URL for every article the newspaper sends. But the State has absolutely no legitimate interest in requiring a sex offender to register the URL of the newspaper or articles the offender reads. And if Mr. Doe chooses one day to make a comment on an article, he must now figure out whether the same URL is in use, and he must make his identity available to the public. Unlike every other subscriber or member of the public, Mr. Doe cannot comment anonymously. *See White v. Baker*, 696 F. Supp. 2d 1289, 1313 (N.D. Ga. 2010) (holding that enforcement of a registration requirement would irreparably harm a registered sex offender "by chilling his First Amendment right to engage in anonymous free speech").[26]

The order states that the preliminary injunction remains in effect until entry of a final judgment in the case or until otherwise ordered. The injunction prohibits the FDLE Commissioner[27] from taking any action based on the current definition of "Internet identifier." However, the injunction does not preclude enforcement of the prior definition.

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[23] The plaintiffs filed this action against current FDLE Commissioner Richard "Rick" L. Swearingen in his official capacity. Preliminary Injunction, *Doe 1 et al. v. Swearingen, etc*., Case No. 4:16-00cv501-RH-CAS (N.D. Fla. Sept. 27, 2016) (on file with the Senate Committee on Criminal Justice). All information regarding this case is from this source.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id*. The injunction also binds the Commissioner's "officers, agents, servants, employees, and attorneys - and others in active concert or participation with any of them - who receive actual notice of this injunction by personal service or otherwise." *Id.*

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.[28] 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.[29]

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.[30] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[31] 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.[32]

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.[33] 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."[34] A violation of the Public Records Act may result in civil or criminal liability.[35]

The Legislature may create an exemption to public records requirements.[36] An exemption must pass by a two-thirds vote of the House and the Senate.[37] 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.[38] A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.[39]

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[28] FLA. CONST., art. I, s. 24(a).
[29] *Id*.
[30] 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.
[31] Public records laws are found throughout the Florida Statutes.
[32] Section 119.01(1), F.S.
[33] 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."
[34] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[35] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[36] FLA. CONST., art. I, s. 24(c).
[37] *Id.*
[38] *Id.*
[39] *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).

When creating a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[40] 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.[41]

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.[42] 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.[43]

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.[44] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[45]
- 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;[46] or
- It protects trade or business secrets.[47]

The OGSR also requires specified questions to be considered during the review process.[48] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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[40] 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).

[41] *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

[42] 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.

[43] Section 119.15(3), F.S.

[44] Section 119.15(6)(b), F.S.

[45] Section 119.15(6)(b)1., F.S.

[46] Section 119.15(6)(b)2., F.S.

[47] Section 119.15(6)(b)3., F.S.

[48] 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?
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?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[49] 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.[50]

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(5), F.S., to exempt from public disclosure those electronic mail addresses and Internet identifiers registered by sexual predators or sexual offenders and held by agencies pursuant to ss. 775.21, 943.0435, 944.606, 944.607, 985.481, or 985.4815, F.S.

Section 1 references definitions for "electronic mail address" and "Internet identifier." "Electronic mail address" has the same meaning as provided in s. 668.602, F.S. Section 668.602(6), F.S., provides that "electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered. "Internet identifier" has the same meaning as provided in s. 775.21, F.S. The substantive linked bill, CS/SB 684, provides that "Internet identifier" means:

> …any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. Internet identifier does not include a date of birth, social security number, personal identification number (PIN), or password. A sexual offender's or sexual predator's use of an Internet identifier that discloses his or her date of birth, social security number, personal identification number (PIN), password, or other information that would reveal the identity of the sexual offender or sexual predator waives the disclosure exemption in this paragraph and in s. 119.071(5)(l) for such personal information.[51]

This exemption applies to records held before, on, or after the effective date of the bill.

The section expressly states that a law enforcement agency is not prohibited from confirming to a member of the public that an electronic mail address or Internet identifier reported pursuant to ss. 775.21, 943.0435, 944.606, 944.607, 985.481, or 985.4815, F.S., is registered in the FDLE sexual offender and sexual predator registry.

Section 1 also provides that the exemption is subject to the OGSR Act in accordance with s. 119.15, F.S., and stands repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

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

[50] Section 119.15(7), F.S.

[51] This is the definition as amended by the CS/SB 684. Coding has been removed.

Section 2 includes a public necessity statement as required by the Florida Constitution.[52] The statement includes the following legislative findings that it is a public necessity to create the exemption:

- The exemption strikes an important balance between the government's legitimate interest in public safety and protecting individuals' rights afforded under the Florida Constitution and First Amendment rights protected by the United States Constitution.
- The exemption maintains the ability of members of the public to confirm whether an electronic mail address or Internet identifier is associated with or is contained in the sexual offender and sexual predator registry without obtaining the personal identifying information of the registrant associated with this information.
- The exemption allows members of the public access to safety information which assists them in making informed decisions regarding communicating or otherwise interacting with registered sexual predators and sexual offenders.
- The exemption preserves the ability of criminal justice agencies to access valuable investigative information.
- Criminal justice agencies are tasked with the prevention of crimes to protect residents, particularly children, from sexual exploitation through investigating and bringing offenders to justice.
- As daily life necessitates increasing dependence upon access to the Internet, sexual exploitation through the use of the Internet grows as well.
- There is a nexus between commercial social networking sites and Internet sex crimes. Commercial social networking sites are widely used among youth and adults for introduction, communication, and publication of personal details that may be exploited.
- Locating missing children, sexual predators, and sexual offenders who have evaded registration is greatly aided through the use of registered electronic mail addresses and Internet identifiers.
- Without the exemption, criminal justice agencies may lose access to information which has become a valuable investigative tool since the inception of this registration requirement.
- Absent a registration requirement for electronic mail addresses and Internet identifiers, investigative agencies will be severely hampered in the growing call to protect Florida residents from sexual exploitation online.
- Electronic mail addresses and Internet identifiers have an exceptional distinction from other registration requirements in that they are used as unique personal identifiers for speech and communication, and because of this distinction, a public records exemption is required to avoid any appearance of infringement on registrants' constitutional rights.
- If the ability to collect this information were prevented, it would greatly disrupt the ability of criminal justice agencies to use this essential information in combatting the prevalent problem of online sexual exploitation of children.

Section 3 directs the Division of Law Revision and Information to replace the phrase "the effective date of this act" whenever it occurs in this act with the date the act becomes a law.

The bill takes effect on the same date that SB 684 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

[52] Article I, s. 24(c), FLA. CONST.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption and includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the public records exemption is no broader than necessary to accomplish its stated purpose.

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 does not appear to have an impact on state or local government revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Connected Bill

A connected bill, CS/SB 684 (2017), revises provisions requiring registered sexual predators and sexual offenders to report Internet identifiers. These revisions include modifying the definition of the term "Internet identifier" and defining a connected term "social Internet communication." The bill also requires a sexual predator and sexual offender to report each Internet identifier's corresponding website homepage or application software name.

Access to Sex Offender Registry Information

The bill does not affect the public's access to information currently available on the sex offender registry. The online registry does not include sex offenders' electronic mail addresses or Internet identifiers.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on April 3, 2017:
The committee substitute:

- Specifies that the public records exemption applies to electronic mail addresses and Internet identifiers registered by sexual predators or sexual offenders and held by agencies pursuant to specified statutory authority.
- Removes language stating that the electronic mail addresses and Internet identifiers can be used "only by criminal justice agencies for criminal justice purposes."
- Removes language precluding disclosure of personal identification information linked to exempt electronic mail addresses and Internet identifiers.
- Removes language authorizing the FDLE to provide exempt information pursuant to s. 943.0437, F.S. (commercial social networking sites).
- Revises the public necessity statement.
- Revises the effective date by providing a contingent effective date (effective on the same date that SB 684 or similar legislation takes effect in the same session).

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Baxley

591-03323A-17 2017686c1

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; defining terms; requiring that electronic mail addresses and Internet identifiers of sexual predators or sexual offenders reported pursuant to specified laws be exempt from public records requirements; providing retroactive applicability; providing construction; providing for future review and repeal of the exemption; providing a statement of public necessity; providing a directive to the Division of Law Revision and Information; providing a contingent effective date.

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

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

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

(5) OTHER PERSONAL INFORMATION.—

(l)1. As used in this paragraph, the term:

a. "Electronic mail address" has the same meaning as in s. 668.602.

b. "Internet identifier" has the same meaning as in s. 775.21.

2. Electronic mail addresses and Internet identifiers registered by sexual predators or sexual offenders and held by agencies pursuant to s. 775.21, s. 943.0435, s. 944.606, s. 944.607, s. 985.481, or s. 985.4815 are exempt from s. 119.07(1)

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and s. 24(a), Art. I of the State Constitution. This exemption applies to records held before, on, or after the effective date of this act.

3. This paragraph does not prohibit a law enforcement agency from confirming to a member of the public that an electronic mail address or Internet identifier reported pursuant to s. 775.21, s. 943.0435, s. 944.606, s. 944.607, s. 985.481, or s. 985.4815 is registered in the Department of Law Enforcement sexual offender and sexual predator registry.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that electronic mail addresses and Internet identifiers registered by sexual predators and sexual offenders and held by agencies pursuant to s. 775.21, s. 943.0435, s. 944.606, s. 944.607, s. 985.481, or s. 985.4815, Florida Statutes, be made exempt from s. 119.071(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the exemption strikes an important balance between the government's legitimate interest in public safety and protecting individuals' rights afforded under the Constitution of the State of Florida and the First Amendment rights protected by the United States Constitution. The exemption maintains the ability of members of the public to confirm whether an electronic mail address or Internet identifier is associated with or is contained in the sexual offender and sexual predator registry without obtaining the

personal identifying information of the registrant associated with the electronic mail address or Internet identifier. This exemption allows members of the public access to safety information which assists them in making informed decisions regarding communicating or otherwise interacting with registered sexual predators and sexual offenders. Additionally, this exemption preserves the ability of criminal justice agencies to access valuable investigative information. Criminal justice agencies are tasked with the prevention of crimes to protect residents, particularly children, from sexual exploitation through investigating and bringing offenders to justice. As daily life necessitates increasing dependence upon access to the Internet, sexual exploitation through the use of the Internet grows as well. There is a nexus between commercial social networking sites and Internet sex crimes. Commercial social networking sites are widely used among youth and adults for introduction, communication, and publication of personal details that may be exploited. Additionally, locating missing children and sexual predators and sexual offenders who have evaded registration is greatly aided through the use of registered electronic mail addresses and Internet identifiers. Without this exemption, criminal justice agencies may lose access to information which has become a valuable investigative tool since the inception of this registration requirement. Absent a registration requirement for electronic mail addresses and Internet identifiers, investigative agencies will be severely hampered in the growing call to protect our residents from sexual exploitation online.

(2) The Legislature recognizes the importance of protecting

rights provided in the First Amendment to the United States Constitution for all citizens. Equally, the Legislature recognizes the importance of preserving the civil regulatory processes of sexual offender and sexual predator registration and ensuring criminal justice agencies have the critical resource of sexual offender and sexual predator electronic mail address and Internet identifier registration information necessary to protect our residents. Electronic mail addresses and Internet identifiers have an exceptional distinction from other registration requirements in that they are used as unique personal identifiers for speech and communication. Because of this distinction, a public records exemption is required to avoid any appearance of infringement on registrants' constitutional rights. If the ability to collect this information were prevented, it would greatly disrupt the ability of criminal justice agencies to use this essential information in combatting the prevalent problem of online sexual exploitation of children. For these reasons and for the preservation of and continued collection of this information, the Legislature finds that it is a public necessity that the electronic mail addresses and Internet identifiers continue to be registered by sexual predators and sexual offenders and held by agencies pursuant to ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, Florida Statutes, be exempt from public record requirements.

Section 3. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" whenever it occurs in this act with the date the act becomes a law.

Section 4. This act shall take effect on the same date that SB 684 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

April 18, 2017

The Honorable Senator Jack Latvala
412 Senate Office Building
Tallahassee, Florida 32399

Dear Chairman Latvala,

I respectfully request you place Senate Bill 684 Internet Identifiers/SB 686 Internet Identifiers Public Records on your next available agenda.

This bill requires sexual offenders and predators to register their internet identifiers and email addresses.

I appreciate your favorable consideration.

Onward & Upward,

Dennis Baxley
Senator, District 12

DKB/dd

cc: Mike Hansen, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@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 25, 2017
Meeting Date

686
Bill Number (if applicable)

Topic Public Records / Internet Identifiers

Amendment Barcode (if applicable)

Name Chief Jeffrey Chudnow

Job Title Chief of Police

Address 2636 Mitcham Drive
Street

Phone 850-219-3631

Tallahassee FL 32308
City *State* *Zip*

Email bhoward@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

25 Apr 17
Meeting Date

686
Bill Number (if applicable)

Topic Public Records - Internet Identifiers

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone

Tall 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 Fla. Smart Justice 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

APPEARANCE RECORD

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

4/25/17
Meeting Date

686
Bill Number (if applicable)

Topic PUBLIC RECORDS / INTERNET IDENTIFIERS

Amendment Barcode (if applicable)

Name JASON JONES

Job Title GENERAL COUNSEL

Address P.O. BOX 1489
Street

TALLAHASSEE FL 32302
City *State* *Zip*

Phone 850 410-7676

Email JASON.JONES@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:	PCS/CS/CS/SB 764 (929072)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Baxley
SUBJECT:	Ad Valorem Taxation
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	**Fav/CS**
2.	Present	Yeatman	CA	**Fav/CS**
3.	Babin	Diez-Arguelles	AFT	**Recommend: Fav/CS**
4.	Babin	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/CS/SB 764 provides an exemption from ad valorem taxation for the homestead of a first responder who is totally and permanently disabled as a result of injuries sustained in the line of duty and to his or her surviving spouse.

The bill also provides application requirements and specifies documentation required to receive the exemption, including a physician's and an employer's certificate. Additionally, the bill provides penalties for any person submitting false information for purposes of claiming the exemption.

The Revenue Estimating Conference estimates that the bill will reduce local governments' property tax receipts by $2.88 million per year, beginning in Fiscal Year 2017-2018.

The bill takes effect upon becoming law and applies to the 2017 tax roll.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of

January 1 of each year.[1] The property appraiser annually determines the "just value"[2] of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[3] Tax bills are mailed in November of each year based on the previous January 1 valuation, and payment is due by March 31 of the following year.

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

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;[6] however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;[7] land used for conservation purposes;[8] historic properties when authorized by the county or municipality;[9] and certain working waterfront property.[10]

Property Tax Exemptions

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[11] The following information discusses the exemptions that disabled persons may receive.

Homestead Exemption

Although not specific to disabled persons, the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate (homestead property) is eligible for a $25,000 homestead tax exemption applicable to

[1] Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.
[2] Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler,* 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey,* 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So. 2d 4 (Fla. 1973).
[3] *See* s. 192.001(2) and (16), F.S.
[4] FLA. CONST. art. VII, s. 1(a).
[5] *See* FLA. CONST. art. VII, s. 4.
[6] Section 193.011(2), F.S.
[7] FLA. CONST. art. VII, s. 4(a).
[8] FLA. CONST. art. VII, s. 4(b).
[9] FLA. CONST. art. VII, s. 4(e).
[10] FLA. CONST. art. VII, s. 4(j).
[11] *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall,* 355 So. 2d 781, 784 (Fla. 1978); *Am Fi Inv. Corp. v. Kinney,* 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

all ad valorem tax levies, including levies by school districts.[12] An additional $25,000 homestead exemption applies to a homestead's property value between $50,000 and $75,000; however, the additional exemption does not apply to ad valorem taxes levied by school districts.[13]

General Disability Exemption

The Florida Constitution provides broad authority for exemptions from property taxes for widows and widowers, blind persons, and persons who are totally and permanently disabled.[14] The Legislature has implemented this provision through various property tax exemptions in ch. 196, F.S.

Full Homestead Exemption for Blind Persons and Quadriplegic, Paraplegic, Hemiplegic, and Totally and Permanently Disabled Persons Confined to Wheelchairs

Section 196.101, F.S., provides a full property tax exemption for any real estate used and owned as a homestead by any quadriplegic, paraplegic, hemiplegic, or other totally and permanently disabled person who must use a wheelchair for mobility, or who is legally blind.[15] Generally, in order to qualify for the exemption, the taxpayer must submit evidence of such disability as certified by two licensed physicians of this state or the United States Department of Veterans Affairs or its predecessor.[16] Except for a quadriplegic, applicants must also show that they meet certain income limitations.[17]

Full Homestead Exemption for Totally and Permanently Disabled Veterans

Section 196.081(1), F.S., provides a full property tax exemption for the homesteads of totally and permanently disabled veterans who were honorably discharged with a service-connected disability and have a letter from the United States Government certifying their disability.

Full Homestead Exemption for Veterans confined to Wheelchairs

Section 196.091, F.S., provides a full property tax exemption for the homesteads of totally disabled veterans who were honorably discharged with a service-connected disability and have a letter from the United States Government certifying that the ex-service member is receiving or has received special pecuniary assistance for specially adopted housing due to the ex-service member's need for a wheelchair.

Proportional Homestead Discount for Combat-disabled Veterans

The Florida Constitution provides a property tax discount to honorably discharged veterans, age 65 or older, who are permanently disabled due to a combat-related injury.[18] The discount applies for partial or total disabilities. For partially disabled persons, the discount is in proportion to the percentage of their disability.

[12] FLA. CONST. art VII, s. 6(a) and s. 196.031, F.S.
[13] FLA. CONST. art VII, s. 6(a).
[14] FLA. CONST. art. VII, s. 3(b).
[15] Section 196.101(1)-(2), F.S.
[16] Section 196.101(3), F.S.
[17] Section 196.101(4), F.S.
[18] FLA. CONST. art. VII, s. 6(e); s. 196.082, F.S.

Homestead Exemption for Surviving Spouses of Veterans and First Responders

Although not specific to disabled persons, the Florida Constitution also authorizes the Legislature to provide, by general law, ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces, as well as the surviving spouse of a first responder who died in the line of duty.[19] This constitutional provision is implemented in s. 196.081, F.S. The Constitution defines "first responder" as a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic.[20]

The Constitution defines "in the line of duty" as arising out of and in the actual performance of duty required by employment as a first responder.[21] This term is further defined in statute to include:

- While engaging in law enforcement;
- While performing an activity relating to fire suppression and prevention;
- While responding to a hazardous material emergency;
- While performing rescue activity;
- While providing emergency medical services;
- While performing disaster relief activity;
- While otherwise engaging in emergency response activity; or
- While engaging in a training exercise related to any of the events or activities listed above if the training has been authorized by the employing entity.[22]

2016 Constitutional Amendment for First Responders – Amendment 3

In the general election held on November 8, 2016, the electors authorized the Legislature to grant property tax relief to certain disabled first responders.[23,24,25]

Under the amendment, the Legislature is authorized to provide property tax relief to first responders who are totally and permanently disabled as a result of injuries sustained in the line of duty; however, the causal connection between a disability and service in the line of duty shall not be presumed, and disability, for purposes of the amendment, does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.[26]

The amendment took effect on January 1, 2017.

[19] FLA. CONST. art. VII, s. 6(f).
[20] FLA. CONST. art. VII, s. 6(f).
[21] *Id*.
[22] Section 196.081(6)(c)2.a.-h., F.S.
[23] *See* Constitutional Amendment 3 (2016), Florida Department of State, available at: http://dos.elections.myflorida.com/initiatives/fulltext/pdf/10-92.pdf.
[24] FLA. CONST. art. VII, s. 6(f)(3).
[25] The Legislature proposed the amendment through HJR 1009 (2016).
[26] FLA. CONST. art. VII, s. 6(f)(3).

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 196.011(1)(b), F.S., to add a reference to the exemption for certain totally and permanently disabled first responders and for their surviving spouses contained in newly created s. 196.102, F.S., to the list of exemptions for which the application form must include a space for social security numbers of the applicant and the applicant's spouse.

Section 2 of the bill creates s. 196.102, F.S., creating a full property tax exemption for homestead property owned by a person who is totally and permanently disabled as a result of an injury received in the line of duty as a first responder. The person must be a resident of this state on January 1 of the year for which the exemption is claimed.

The bill defines "first responder" as a law enforcement officer or correctional officer as defined in s. 943.10, F.S.,[27] a firefighter as defined in s. 633.102, F.S.,[28] or an emergency medical technician or paramedic as defined in s. 401.23, F.S.,[29] who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

The bill defines "cardiac event" as a heart attack, stroke, or vascular rupture.

The bill defines "in the line of duty" to mean:

- While engaging in activities within the course and scope of employment as a first responder;
- While performing an activity relating to fire suppression and prevention;
- While responding to a hazardous material emergency;
- While performing rescue activity;
- While providing emergency medical services;
- While performing disaster relief activity;
- While otherwise engaging in emergency response activity; or
- While engaging in a training exercise related to any of the events or activities listed above if the training has been authorized by the employing entity.

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[27] Section 943.10(1), F.S., defines "law enforcement officer" as any person who is elected, appointed, or employed full-time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10(2), F.S., defines "correctional officer" as any person who is appointed or employed full-time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

[28] Section 633.102(9), F.S., defines "firefighter" as an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services under s. 633.408, F.S.

[29] Section 401.23(11), F.S., defines "emergency medical technician" as a person who is certified by the Department of Health to perform basic life support pursuant to part III of ch. 401, F.S. Section 401.23(17), F.S., defines "paramedic" as a person who is certified by the Department of Health to perform basic and advanced life support pursuant to this part.

The bill provides that total and permanent disability requires that the applicant's disability render him or her unable to engage in any substantial gainful occupation due to an impairment of the mind or body that is reasonably certain to continue throughout the life of the applicant.[30]

The bill provides that total and permanent disability that results from a cardiac event does not qualify for the exemption unless the cardiac event occurs no later than 24 hours after the first responder performed nonroutine stressful or strenuous physical activity in the line of duty and the first responder provides the employer with competent medical evidence showing that:

- The nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the first responder's total and permanent disability; and
- The cardiac event was not caused by preexisting vascular disease.

The bill allows the first responder to qualify for the exemption using one of two methods.

Under method one, the first responder can qualify by demonstrating that he or she qualifies for the homestead exemption for totally and permanently disabled persons provided in s. 196.101, F.S. (*See* discussion supra, page 3).

Under method two, if the first responder provides the following documents to the property appraiser of the county where the property is located, the documents serve as prima facie evidence that the first responder is entitled to the exemption:

- An award letter, based on total and permanent disability, from the Social Security Administration;
- A certificate of total and permanent disability, in a specified form, from a physician licensed in this state, attesting that the applicant's total and permanent disability is reasonably expected to continue for the duration of the applicant's life.
- A certificate from the organization that employed the first responder at the time that the injury or injuries occurred.

Physician's Certification of Total and Permanent Disability

The bill requires the physician's certificate to include specified information regarding the applicant's total and permanent disability. The physician must certify that the applicant, identified by name and social security number, is totally and permanently disabled. The physician must also list the disabling condition. Additionally, the physician's certificate must include a notice to the taxpayer that each Florida resident applying for an exemption must present to the county property appraiser a copy of the form, an award letter from the Social Security Administration, and a letter from the first responder's employer. Each form is to be completed by a licensed Florida physician. The physician's certificate must also include a notice to the taxpayer and the physician that any person who knowingly and willfully gives false information for the purpose of claiming the homestead exemption commits a misdemeanor of the first degree, punishable by up to 1 year in prison, a fine up to $5,000, or both.

[30] This standard is based on the standard used by the Veterans Administration. *See* 38 C.F.R. s. 3.340(a) and (b).

Employer Certificate

The employer certificate must, at a minimum, attest and include the title of the person signing the certificate, the name and address of the employing entity, a description of the incident that caused the injury or injuries, and a statement that the first responder's injury or injuries were:

- Directly and proximately caused by service in the line of duty.
- Without willful negligence on the part of the first responder.
- The sole cause of the first responder's total and permanent disability.
- If the total and permanent disability resulted from a cardiac event, the employer must also certify that the cardiac event occurred no later than 24 hours after the first responder performed nonroutine stressful or strenuous physical activity in the line of duty and the first responder has provided the employer with medical evidence showing that the nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the total and permanent disability, and that the cardiac event was not caused by a preexisting vascular disease.

In addition, the employer certificate must be supplemented with extant documentation of the incident or event that caused the injury, such as an accident or incident report. The first responder may deliver the original employer certificate to the property appraiser's office or the first responder's employer may directly transmit the employer certificate to the applicable property appraiser.

Surviving Spouse

The bill provides that the tax exemption carries over to the surviving spouse as long as the surviving spouse holds the legal or beneficial title to the homestead, permanently resides thereon, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted under the most recent ad valorem tax roll may be transferred to the new residence if it is used as the surviving spouse's primary residence and he or she does not remarry.

Application for Exemption

The bill provides that a first responder may apply for the exemption before producing the necessary documentation. Upon receipt of the documentation, the property appraiser will grant the exemption as of the date of the original application and the excess taxes paid shall be refunded. Any refund of excess taxes paid is limited to those paid during the 4-year period of limitation set forth in s. 197.182(1)(e), F.S.[31]

The provisions of s. 196.011(9), F.S., for waiving the requirement for property owners to submit an annual application to the property appraiser also apply to applications made under this section.

[31] A claim for refund may not be granted unless the claim is made within 4 years after January 1 of the tax year for which the taxes were paid.

Penalties

The bill provides that any person who knowingly or willfully gives false information for the purpose of claiming homestead exemption under this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S.,[32] or by fine of not more than $5,000, or both.

Administrative Rules

The bill authorizes and provides that the Department of Revenue may adopt emergency rules pursuant to ss. 120.536(1) and 120.54, F.S., for the administration of the application process for the 2017 calendar year. This provision is repealed on August 30, 2018.

The bill provides that notwithstanding the provisions of ss. 196.011 and 196.102, F.S., the deadline for a first responder to file an application with the property appraiser for an exemption under s. 196.102, F.S., for the 2017 tax year is August 1, 2017.

The property appraiser may grant an application for an exemption that is filed untimely for the 2017 tax roll if:

- The applicant is qualified for the exemption; and
- The applicant produces sufficient evidence, as determined by the property appraiser, which demonstrates that the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrates extenuating circumstances that warrant granting the exemption.

If the property appraiser denies an application for the 2017 tax roll, the applicant may file a petition with the value adjustment board as set forth in s. 194.011(3), F.S. The petition must be filed on or before the 25th day after the mailing by the property appraiser during the 2017 calendar year of the notice required under s. 194.011(1), F.S. Notwithstanding s. 194.013, F.S., the applicant is not required to pay a filing fee for such petition. Upon review of the petition, the value adjustment board shall grant the exemption if it determines the applicant is qualified and has demonstrated the existence of extenuating circumstances warranting the exemption.

Section 3 of the bill specifies that the act operates retroactively to January 1, 2017.

Section 4 of the bill provides that it takes effect upon becoming a law.

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 mandate

[32] A person convicted of a misdemeanor of the first degree may be sentenced by a definite term of imprisonment not exceeding 1 year.

requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was $2 million or less.[33,34,35]

The bill reduces counties' and municipalities' authority to raise revenue by reducing ad valorem tax bases compared to the tax bases that would exist under current law. However, the bill is expected to have an insignificant impact on counties and municipalities.

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 governments' property tax revenues by $2.88 million per year, beginning in Fiscal Year 2017-2018. Of the $2.88 million impact, the impact to schools is $1.24 million and the impact to counties and municipalities is $1.64 million.

B. Private Sector Impact:

Homestead owners who were totally and permanently disabled in the line of duty as a first responder will pay less property taxes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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[33] FLA. CONST. art. VII, s. 18(d).

[34] 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 April 6, 2017).

[35] 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 April 6, 2017).

VIII. Statutes Affected:

This bill substantially amends section 196.011 of the Florida Statutes.

This bill creates section 196.102 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.)

Recommended CS/CS/CS by Appropriations Subcommittee on Finance and Tax on April 13, 2017:
The committee substitute:

- Deletes the definition of "disabled" from the bill and provides that the physician certificate attesting to totally and permanently disability requires a finding by the physician that the total and permanent disability prevents the applicant from engaging in substantial gainful occupation due to an impairment of the mind or body, and the condition is reasonably expected to continue throughout the life of the applicant;
- Allows an applicant to qualify for the exemption by demonstrating that the applicant qualifies for the totally and permanently disabled exemption in s. 196.101, F.S.;
- Reduces the number of physician certifications from 2 to 1, but requires an applicant who is relying on certifications by a physician and the applicant's prior employer to qualify for the exemption to also provide an award letter from the Social Security Administration; and
- Deletes from the bill an unnecessary grant of permanent rulemaking authority for the Department of Revenue.

CS/CS by Community Affairs on March 22, 2017:

- Revises the physician's required certification form to include disclaimers to the taxpayer and physician;
- Removes a provision that extended the deadline for a property appraiser to serve notice setting his or her grounds for denial of the exemption in certain circumstances; and
- Makes a technical change for the act to apply retroactively, rather than prospectively, to the 2017 tax roll.

CS by Governmental Oversight and Accountability on March 6, 2017:

- Leaves s. 196.091(6), F.S.,(exemption for surviving spouse of first responder who dies in the line of duty) where it is in statute and does not move this exemption to newly created s. 196.02, F.S.;
- Adds definition of "cardiac event" and revises definition of "in the line of duty";
- Revises application requirements to remove Department of Veteran Affairs as an option for providing physician letter;
- Revises application procedures to allow first responder to deliver employer certification to property appraiser;

- Revises procedures for denying exemption by property appraiser and provides additional time to issue notice of denial from date of application; and
- Changes effective date from July 1, 2017, to effective upon becoming a law.

B. Amendments:

None.

135936

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 52 - 171

and insert:

(a) "Cardiac event" means a heart attack, stroke, or vascular rupture.

(b) "First responder" has the same meaning as in s. 196.081.

(c) "In the line of duty" has the same meaning as in s. 196.081.

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(d) "Total and permanent disability" means an impairment of the mind or body which renders a first responder unable to engage in a substantial gainful occupation and which is reasonably certain to continue throughout his or her life.

(2) Any real estate that is owned and used as a homestead by a person who has a total and permanent disability as a result of an injury or injuries sustained in the line of duty while serving as a first responder in this state or during an operation in another state or country authorized by this state or by a political subdivision of this state is exempt from taxation, if the first responder is a permanent resident of this state on January 1 of the year for which the exemption is being claimed.

(3) An applicant may qualify for the exemption under this section by applying by March 1, pursuant to subsection (4) or subsection (5), to the property appraiser of the county where the property is located.

(4) An applicant may qualify for the exemption under this section by providing the employer certificate described in paragraph (5)(b) and satisfying the requirements for the totally and permanently disabled exemption in s. 196.101; however, for purposes of this section, the applicant is not required to satisfy the gross income requirement in s. 196.101(4)(a).

(5) An applicant may qualify for the exemption under this section by providing all of the following documents to the property appraiser, which serve as prima facie evidence that the person is entitled to the exemption:

(a) Documentation from the Social Security Administration stating that the applicant is totally and permanently disabled.

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The documentation must be provided to the property appraiser within 3 months after issuance. An applicant who is not eligible to receive a medical status determination from the Social Security Administration due to his or her ineligibility for Social Security benefits or Medicare benefits may provide documentation from the Social Security Administration stating that the applicant is not eligible to receive a medical status determination from the Social Security Administration, and provide physician certifications as required by paragraph (c) from two professionally unrelated physicians, rather than the one certification required by that paragraph.

(b)1. A certificate from the organization that employed the applicant as a first responder or supervised the applicant as a volunteer first responder at the time that the injury or injuries occurred. The employer certificate must contain, at a minimum:

a. The title of the person signing the certificate;

b. The name and address of the employing entity;

c. A description of the incident that caused the injury or injuries;

d. The date and location of the incident; and

e. A statement that the first responder’s injury or injuries were:

(I) Directly and proximately caused by service in the line of duty.

(II) Without willful negligence on the part of the first responder.

(III) The sole cause of the first responder’s total and permanent disability.

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2. If the first responder's total and permanent disability was caused by a cardiac event, the employer must also certify that the requirements of subsection (6) are satisfied.

3. The employer certificate must be supplemented with extant documentation of the incident or event that caused the injury, such as an accident or incident report. The applicant may deliver the original employer certificate to the property appraiser's office or the employer may directly transmit the employer certificate to the applicable property appraiser.

(c) A certificate from a physician licensed in this state under chapter 458 or chapter 459 which certifies that the applicant has a total and permanent disability and that such disability renders the applicant unable to engage in any substantial gainful occupation due to an impairment of the mind or body, which condition is reasonably certain to continue throughout the life of the applicant. The physician certificate shall read as follows:

FIRST RESPONDER'S
PHYSICIAN CERTIFICATE OF
TOTAL AND PERMANENT DISABILITY

I,...(name of physician)..., a physician licensed pursuant to chapter 458 or chapter 459, Florida Statutes, hereby certify that Mr.....Mrs.....Miss.... Ms.....(applicant name and social security number)..., is totally and permanently disabled due to an impairment of the mind or body, and such impairment renders him or her unable to engage in any substantial gainful occupation, which condition is reasonably certain to continue

throughout his or her life. Mr.....Mrs.....Miss.... Ms.....(applicant name)... has the following mental or physical condition(s):

It is my professional belief that within a degree of medical certainty, the above-named condition(s) render Mr.....Mrs.....Miss.... Ms.....(applicant name)... totally and permanently disabled and that the foregoing statements are true, correct, and complete to the best of my knowledge and professional belief.

Signature....
Address...(print)...
Date....
Florida Board of Medicine or Osteopathic Medicine license number
Issued on.....

NOTICE TO TAXPAYER: Each Florida resident applying for an exemption due to a total and permanent disability that occurred in the line of duty while serving as a first responder must present to the county property appraiser the required physician certificate(s), the required documentation from the Social Security Administration, and a certificate from the employer for whom the applicant worked as a first responder at the time of the injury or injuries, as required by section 196.102(5), Florida Statutes. This form is to be completed by a licensed Florida physician.

NOTICE TO TAXPAYER AND PHYSICIAN: Section 196.102(10), Florida

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Statutes, provides that any person who knowingly and willingly gives false information for the purpose of claiming the homestead exemption for totally and permanently disabled first responders commits a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding 1 year or a fine not exceeding $5,000, or both.

(6) A total and permanent disability that results from a cardiac event does not qualify for the exemption provided in this section unless the cardiac event occurs no later than 24 hours after the first responder performed nonroutine stressful or strenuous physical activity in the line of duty and the first responder provides the employer with a certificate from the first responder's treating cardiologist for the cardiac event and pertinent supporting documentation showing that:

(a) The nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the total and permanent disability; and

(b) The cardiac event was not caused by a preexisting vascular disease.

(7) An applicant who is granted the exemption under this

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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to an ad valorem tax exemption for first responders; amending s.

929072

576-03804-17

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Finance and Tax)

A bill to be entitled

An act relating to ad valorem taxation; amending s. 196.011, F.S.; specifying the information to be included in an application for certain tax exemptions; creating s. 196.102, F.S.; providing definitions; providing an exemption from ad valorem taxation for certain first responders under specified conditions; providing procedures for applying for the exemption; specifying requirements for documents that serve as prima facie evidence of entitlement to the exemption; providing that total and permanent disabilities resulting from cardiac events do not qualify for the exemption except when certain conditions are met; providing that applicants have a continuing duty to notify property appraisers of certain changes; providing that the exemption carries over to the benefit of surviving spouses under certain circumstances; providing requirements relating to the date of granting an exemption and the refund of excess taxes; providing a criminal penalty for knowingly or willfully giving false information to claim the exemption; specifying a deadline and procedures for applying for the exemption for the 2017 tax year; specifying procedures for petitioning a denial with the value adjustment board; authorizing the Department of Revenue to adopt emergency rules; providing retroactive operation; providing an effective date.

929072

576-03804-17

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

Section 1. Paragraph (b) of subsection (1) of section 196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.—

(1)

(b) The form to apply for an exemption under s. 196.031, s. 196.081, s. 196.091, s. 196.101, s. 196.102, s. 196.173, or s. 196.202 must include a space for the applicant to list the social security number of the applicant and of the applicant's spouse, if any. If an applicant files a timely and otherwise complete application, and omits the required social security numbers, the application is incomplete. In that event, the property appraiser shall contact the applicant, who may refile a complete application by April 1. Failure to file a complete application by that date constitutes a waiver of the exemption privilege for that year, except as provided in subsection (7) or subsection (8).

Section 2. Section 196.102, Florida Statutes, is created to read:

196.102 Exemption for certain totally and permanently disabled first responders.—

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

(a) "First responder" has the same meaning as in s. 196.081.

(b) "Cardiac event" means a heart attack, stroke, or vascular rupture.

(c) "In the line of duty" has the same meaning as in s.

196.081.

(2) Any real estate that is owned and used as a homestead by a person who is totally and permanently disabled as a result of an injury or injuries sustained in the line of duty while serving as a first responder is exempt from taxation, if the first responder is a permanent resident of this state on January 1 of the year for which the exemption is being claimed.

(3) An applicant may qualify for the exemption under this section by applying by March 1, pursuant to subsection (4) or subsection (5), to the property appraiser of the county where the property is located.

(4) An applicant may qualify for the exemption under this section by satisfying the requirements for the totally and permanently disabled exemption in s. 196.101; however, for purposes of this section, the applicant is not required to satisfy the gross income requirement in s. 196.101(4)(a).

(5) An applicant may qualify for the exemption under this section by providing all of the following documents, which serve as prima facie evidence that the person is entitled to the exemption:

(a) An award letter from the Social Security Administration, based upon the applicant's total and permanent disability, provided to the property appraiser within 3 months after issuance.

(b)1. A certificate from the organization that employed the applicant as a first responder at the time that the injury or injuries occurred. The employer certificate must contain, at a minimum:

a. The title of the person signing the certificate;

b. The name and address of the employing entity;

c. A description of the incident that caused the injury or injuries;

d. The date and location of the incident; and

e. A statement that the first responder's injury or injuries were:

(I) Directly and proximately caused by service in the line of duty.

(II) Without willful negligence on the part of the first responder.

(III) The sole cause of the first responder's total and permanent disability.

2. If the first responder's total and permanent disability was caused by a cardiac event, the employer must also certify that the requirements of subsection (6) are satisfied.

3. The employer certificate must be supplemented with extant documentation of the incident or event that caused the injury, such as an accident or incident report. The applicant may deliver the original employer certificate to the property appraiser's office or the employer may directly transmit the employer certificate to the applicable property appraiser.

(c) A certificate from a physician licensed in this state under chapter 458 or chapter 459 which certifies that the applicant is totally and permanently disabled and that such disability renders the applicant unable to engage in any substantial gainful occupation due to an impairment of the mind or body, which condition is reasonably certain to continue throughout the life of the applicant. The physician certificate shall read as follows:

FIRST RESPONDER'S
PHYSICIAN CERTIFICATE OF
TOTAL AND PERMANENT DISABILITY

I,...(name of physician)..., a physician licensed pursuant to chapter 458 or chapter 459, Florida Statutes, hereby certify that Mr.....Mrs.....Miss.... Ms.....(applicant name and social security number)..., is totally and permanently disabled due to an impairment of the mind or body, and such impairment renders him or her unable to engage in any substantial gainful occupation, which condition is reasonably certain to continue throughout his or her life. This is due to the following mental or physical condition(s):

It is my professional belief that the above-named condition(s) render Mr.....Mrs.....Miss.... Ms.....(applicant name)... totally and permanently disabled and that the foregoing statements are true, correct, and complete to the best of my knowledge and professional belief.

Signature....
Address...(print)...
Date....
Florida Board of Medicine or Osteopathic Medicine license number
Issued on.....

NOTICE TO TAXPAYER: Each Florida resident applying for an exemption due to a disability that occurred in the line of duty

while serving as a first responder must present to the county property appraiser a copy of this form, an award letter from the Social Security Administration, and a certificate from the employer for whom the applicant worked as a first responder at the time of the injury, as required by section 196.102(5), Florida Statutes. This form is to be completed by a licensed Florida physician.

NOTICE TO TAXPAYER AND PHYSICIAN: Section 196.102(10), Florida Statutes, provides that any person who knowingly and willingly gives false information for the purpose of claiming the homestead exemption for totally and permanently disabled first responders commits a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding 1 year or a fine not exceeding $5,000, or both.

(6) A total and permanent disability that results from a cardiac event does not qualify for the exemption provided in this section unless the cardiac event occurs no later than 24 hours after the first responder performed nonroutine stressful or strenuous physical activity in the line of duty and the first responder provides the employer with medical evidence showing that:

(a) The nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the total and permanent disability; and

(b) The cardiac event was not caused by a preexisting vascular disease.

(7) An applicant that is granted the exemption under this section has a continuing duty to notify the property appraiser

of any changes in his or her status with the Social Security Administration or in employment or other relevant changes in circumstances which affect his or her qualification for the exemption.

(8) The tax exemption carries over to the benefit of the surviving spouse as long as the surviving spouse holds the legal or beneficial title to the homestead, permanently resides thereon as specified in s. 196.031, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted under the most recent ad valorem tax roll may be transferred to the new residence if it is used as the surviving spouse's primary residence and he or she does not remarry.

(9) An applicant may apply for the exemption before producing the necessary documentation described in subsection (4) or subsection (5). Upon receipt of the documentation, the exemption must be granted as of the date of the original application and the excess taxes paid must be refunded. Any refund of excess taxes paid must be limited to those paid during the 4-year period of limitation set forth in s. 197.182(1)(e).

(10) A person who knowingly or willfully gives false information for the purpose of claiming the exemption provided in this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than $5,000, or both.

(11) Notwithstanding s. 196.011 and this section, the deadline for a first responder to file an application with the property appraiser for an exemption under this section for the 2017 tax year is August 1, 2017.

(12) If an application is not timely filed under subsection (11), a property appraiser may grant the exemption if:

(a) The applicant files an application for the exemption on or before the 25th day after the mailing of the notice required under s. 194.011(1) by the property appraiser during the 2017 calendar year;

(b) The applicant is qualified for the exemption; and

(c) The applicant produces sufficient evidence, as determined by the property appraiser, which demonstrates that the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrates extenuating circumstances that warrant granting the exemption.

(13) If the property appraiser denies an exemption under subsection (11) or subsection (12), the applicant may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the exemption be granted. Notwithstanding s. 194.013, the eligible first responder is not required to pay a filing fee for such petition filed on or before December 31, 2017. Upon review of the petition, the value adjustment board shall grant the exemption if it determines the applicant is qualified and has demonstrated the existence of extenuating circumstances warranting the exemption.

(14) The Department of Revenue may, and all conditions are deemed to be met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54 to administer the application process for the 2017 calendar year. This subsection expires August 30, 2018.

Section 3. This act operates retroactively to January 1, 2017.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/CS/SB 764
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Baxley
SUBJECT:	Ad Valorem Taxation
DATE:	April 26, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	**Fav/CS**
2.	Present	Yeatman	CA	**Fav/CS**
3.	Babin	Diez-Arguelles	AFT	**Recommend: Fav/CS**
4.	Babin	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 764 provides an exemption from ad valorem taxation for the homestead of a first responder who has a total and permanent disability as a result of injuries sustained in the line of duty and to his or her surviving spouse.

The bill also provides application requirements and specifies documentation required to receive the exemption, including documentation from the Social Security Administration, and a physician's and an employer's certificate. Additionally, the bill provides penalties for any person submitting false information for purposes of claiming the exemption.

The Revenue Estimating Conference estimates that the bill will reduce local governments' property tax receipts by $2.88 million per year, beginning in Fiscal Year 2017-2018.

The bill takes effect upon becoming law and applies to the 2017 tax roll.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of

January 1 of each year.[1] The property appraiser annually determines the "just value"[2] of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[3] Tax bills are mailed in November of each year based on the previous January 1 valuation, and payment is due by March 31 of the following year.

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

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;[6] however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;[7] land used for conservation purposes;[8] historic properties when authorized by the county or municipality;[9] and certain working waterfront property.[10]

Property Tax Exemptions

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[11] The following information discusses the exemptions that disabled persons may receive.

Homestead Exemption

Although not specific to disabled persons, the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate (homestead property) is eligible for a $25,000 homestead tax exemption applicable to

[1] Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.
[2] Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler,* 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey,* 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So. 2d 4 (Fla. 1973).
[3] *See* s. 192.001(2) and (16), F.S.
[4] FLA. CONST. art. VII, s. 1(a).
[5] *See* FLA. CONST. art. VII, s. 4.
[6] Section 193.011(2), F.S.
[7] FLA. CONST. art. VII, s. 4(a).
[8] FLA. CONST. art. VII, s. 4(b).
[9] FLA. CONST. art. VII, s. 4(e).
[10] FLA. CONST. art. VII, s. 4(j).
[11] *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall,* 355 So. 2d 781, 784 (Fla. 1978); *Am Fi Inv. Corp. v. Kinney,* 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

all ad valorem tax levies, including levies by school districts.[12] An additional $25,000 homestead exemption applies to a homestead's property value between $50,000 and $75,000; however, the additional exemption does not apply to ad valorem taxes levied by school districts.[13]

General Disability Exemption

The Florida Constitution provides broad authority for exemptions from property taxes for widows and widowers, blind persons, and persons who are totally and permanently disabled.[14] The Legislature has implemented this provision through various property tax exemptions in ch. 196, F.S.

Full Homestead Exemption for Blind Persons and Quadriplegic, Paraplegic, Hemiplegic, and Totally and Permanently Disabled Persons Confined to Wheelchairs

Section 196.101, F.S., provides a full property tax exemption for any real estate used and owned as a homestead by any quadriplegic, paraplegic, hemiplegic, or other totally and permanently disabled person who must use a wheelchair for mobility, or who is legally blind.[15] Generally, in order to qualify for the exemption, the taxpayer must submit evidence of such disability as certified by two licensed physicians of this state or the United States Department of Veterans Affairs or its predecessor.[16] Except for a quadriplegic, applicants must also show that they meet certain income limitations.[17]

Full Homestead Exemption for Totally and Permanently Disabled Veterans

Section 196.081(1), F.S., provides a full property tax exemption for the homesteads of totally and permanently disabled veterans who were honorably discharged with a service-connected disability and have a letter from the United States Government certifying their disability.

Full Homestead Exemption for Veterans confined to Wheelchairs

Section 196.091, F.S., provides a full property tax exemption for the homesteads of totally disabled veterans who were honorably discharged with a service-connected disability and have a letter from the United States Government certifying that the ex-service member is receiving or has received special pecuniary assistance for specially adopted housing due to the ex-service member's need for a wheelchair.

Proportional Homestead Discount for Combat-disabled Veterans

The Florida Constitution provides a property tax discount to honorably discharged veterans, age 65 or older, who are permanently disabled due to a combat-related injury.[18] The discount applies for partial or total disabilities. For partially disabled persons, the discount is in proportion to the percentage of their disability.

[12] FLA. CONST. art VII, s. 6(a) and s. 196.031, F.S.
[13] FLA. CONST. art VII, s. 6(a).
[14] FLA. CONST. art. VII, s. 3(b).
[15] Section 196.101(1)-(2), F.S.
[16] Section 196.101(3), F.S.
[17] Section 196.101(4), F.S.
[18] FLA. CONST. art. VII, s. 6(e); s. 196.082, F.S.

Homestead Exemption for Surviving Spouses of Veterans and First Responders

Although not specific to disabled persons, the Florida Constitution also authorizes the Legislature to provide, by general law, ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces, as well as the surviving spouse of a first responder who died in the line of duty.[19] This constitutional provision is implemented in s. 196.081, F.S. The Constitution defines "first responder" as a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic.[20]

The Constitution defines "in the line of duty" as arising out of and in the actual performance of duty required by employment as a first responder.[21] This term is further defined in statute to include:

- While engaging in law enforcement;
- While performing an activity relating to fire suppression and prevention;
- While responding to a hazardous material emergency;
- While performing rescue activity;
- While providing emergency medical services;
- While performing disaster relief activity;
- While otherwise engaging in emergency response activity; or
- While engaging in a training exercise related to any of the events or activities listed above if the training has been authorized by the employing entity.[22]

2016 Constitutional Amendment for First Responders – Amendment 3

In the general election held on November 8, 2016, the electors authorized the Legislature to grant property tax relief to certain disabled first responders.[23,24,25]

Under the amendment, the Legislature is authorized to provide property tax relief to first responders who are totally and permanently disabled as a result of injuries sustained in the line of duty; however, the causal connection between a disability and service in the line of duty shall not be presumed, and disability, for purposes of the amendment, does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.[26]

The amendment took effect on January 1, 2017.

[19] FLA. CONST. art. VII, s. 6(f).
[20] *Id*.
[21] *Id*.
[22] Section 196.081(6)(c)2.a.-h., F.S.
[23] *See* Constitutional Amendment 3 (2016), Florida Department of State, available at: http://dos.elections.myflorida.com/initiatives/fulltext/pdf/10-92.pdf.
[24] FLA. CONST. art. VII, s. 6(f)(3).
[25] The Legislature proposed the amendment through HJR 1009 (2016).
[26] FLA. CONST. art. VII, s. 6(f)(3).

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 196.011(1)(b), F.S., to add a reference to the exemption for certain totally and permanently disabled first responders and for their surviving spouses contained in newly created s. 196.102, F.S., to the list of exemptions for which the application form must include a space for social security numbers of the applicant and the applicant's spouse.

Section 2 of the bill creates s. 196.102, F.S., creating a full property tax exemption for homestead property owned by a person who has a total and permanent disability as a result of an injury received in the line of duty as a first responder. The person must be a resident of this state on January 1 of the year for which the exemption is claimed.

The bill defines "first responder" as a law enforcement officer or correctional officer as defined in s. 943.10, F.S.,[27] a firefighter as defined in s. 633.102, F.S.,[28] or an emergency medical technician or paramedic as defined in s. 401.23, F.S.,[29] who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

The bill defines "cardiac event" as a heart attack, stroke, or vascular rupture.

The bill defines "in the line of duty" to mean:

- While engaging in activities within the course and scope of employment as a first responder;
- While performing an activity relating to fire suppression and prevention;
- While responding to a hazardous material emergency;
- While performing rescue activity;
- While providing emergency medical services;
- While performing disaster relief activity;
- While otherwise engaging in emergency response activity; or
- While engaging in a training exercise related to any of the events or activities listed above if the training has been authorized by the employing entity.

[27] Section 943.10(1), F.S., defines "law enforcement officer" as any person who is elected, appointed, or employed full-time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10(2), F.S., defines "correctional officer" as any person who is appointed or employed full-time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

[28] Section 633.102(9), F.S., defines "firefighter" as an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services under s. 633.408, F.S.

[29] Section 401.23(11), F.S., defines "emergency medical technician" as a person who is certified by the Department of Health to perform basic life support pursuant to part III of ch. 401, F.S. Section 401.23(17), F.S., defines "paramedic" as a person who is certified by the Department of Health to perform basic and advanced life support pursuant to this part.

The bill defines "total and permanent disability" as an impairment of the mind or body which renders a first responder unable to engage in a substantial gainful occupation and which is reasonably certain to continue throughout his or her life.[30]

The bill provides that total and permanent disability that results from a cardiac event does not qualify for the exemption unless the cardiac event occurs no later than 24 hours after the first responder performed nonroutine stressful or strenuous physical activity in the line of duty. The first responder must provide the employer with a certificate from the first responder's treating cardiologist for the cardiac event, along with pertinent supporting documentation, showing that:

- The nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the first responder's total and permanent disability; and
- The cardiac event was not caused by preexisting vascular disease.

The bill allows the first responder to qualify for the exemption using one of two methods.

Under method one, the first responder can qualify by providing a certificate from the organization that employed the first responder at the time that the injury or injuries occurred and by demonstrating that he or she qualifies for the homestead exemption for totally and permanently disabled persons provided in s. 196.101, F.S. (*See* discussion supra, page 3).

Under method two, if the first responder provides the following documents to the property appraiser of the county where the property is located, the documents serve as prima facie evidence that the first responder is entitled to the exemption:

- Documentation from the Social Security Administration stating that the first responder is totally and permanently disabled;
- A certificate of total and permanent disability, in a specified form, from a physician licensed in this state, attesting that the applicant's total and permanent disability is reasonably expected to continue for the duration of the applicant's life.
- A certificate from the organization that employed the first responder at the time that the injury or injuries occurred.

Under method two, if the first responder does not qualify for disability benefits and thus is unable to have his or her disability evaluated by the Social Security Administration, the first responder may instead provide documentation from the Social Security Administration stating that the first responder is not eligible to be evaluated and provide certificates of total and permanent disability from two professionally unrelated physicians, rather than the one certificate normally required.

Physician's Certification of Total and Permanent Disability

The bill requires the physician's certificate to include specified information regarding the applicant's total and permanent disability. The physician must certify that the applicant, identified by name and social security number, is totally and permanently disabled. The physician must also list the disabling condition. Additionally, the physician's certificate must include a notice to the taxpayer that each Florida resident applying for an exemption must

[30] This standard is based on the standard used by the Veterans Administration. *See* 38 C.F.R. s. 3.340(a) and (b).

present to the county property appraiser the required physician certificate(s), the required documentation from the Social Security Administration, and a letter from the first responder's employer. Each form is to be completed by a licensed Florida physician. The physician's certificate must also include a notice to the taxpayer and the physician that any person who knowingly and willfully gives false information for the purpose of claiming the homestead exemption commits a misdemeanor of the first degree, punishable by up to 1 year in prison, a fine up to $5,000, or both.

Employer Certificate

The employer certificate must, at a minimum, attest and include the title of the person signing the certificate, the name and address of the employing entity, a description of the incident that caused the injury or injuries, and a statement that the first responder's injury or injuries were:

- Directly and proximately caused by service in the line of duty.
- Without willful negligence on the part of the first responder.
- The sole cause of the first responder's total and permanent disability.
- If the total and permanent disability resulted from a cardiac event, the employer must also certify that the cardiac event occurred no later than 24 hours after the first responder performed nonroutine stressful or strenuous physical activity in the line of duty and the first responder has provided the employer with medical evidence showing that the nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the total and permanent disability, and that the cardiac event was not caused by a preexisting vascular disease.

In addition, the employer certificate must be supplemented with extant documentation of the incident or event that caused the injury, such as an accident or incident report. The first responder may deliver the original employer certificate to the property appraiser's office or the first responder's employer may directly transmit the employer certificate to the applicable property appraiser.

Surviving Spouse

The bill provides that the tax exemption carries over to the surviving spouse as long as the surviving spouse holds the legal or beneficial title to the homestead, permanently resides thereon, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted under the most recent ad valorem tax roll may be transferred to the new residence if it is used as the surviving spouse's primary residence and he or she does not remarry.

Application for Exemption

The bill provides that a first responder may apply for the exemption before producing the necessary documentation. Upon receipt of the documentation, the property appraiser will grant the exemption as of the date of the original application and the excess taxes paid shall be

refunded. Any refund of excess taxes paid is limited to those paid during the 4-year period of limitation set forth in s. 197.182(1)(e), F.S.[31]

The provisions of s. 196.011(9), F.S., for waiving the requirement for property owners to submit an annual application to the property appraiser also apply to applications made under this section.

Penalties

The bill provides that any person who knowingly or willfully gives false information for the purpose of claiming homestead exemption under this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S.,[32] or by fine of not more than $5,000, or both.

Administrative Rules

The bill authorizes and provides that the Department of Revenue may adopt emergency rules pursuant to ss. 120.536(1) and 120.54, F.S., for the administration of the application process for the 2017 calendar year. This provision is repealed on August 30, 2018.

The bill provides that notwithstanding the provisions of ss. 196.011 and 196.102, F.S., the deadline for a first responder to file an application with the property appraiser for an exemption under s. 196.102, F.S., for the 2017 tax year is August 1, 2017.

The property appraiser may grant an application for an exemption that is filed untimely for the 2017 tax roll if:

- The applicant is qualified for the exemption; and
- The applicant produces sufficient evidence, as determined by the property appraiser, which demonstrates that the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrates extenuating circumstances that warrant granting the exemption.

If the property appraiser denies an application for the 2017 tax roll, the applicant may file a petition with the value adjustment board as set forth in s. 194.011(3), F.S. The petition must be filed on or before the 25th day after the mailing by the property appraiser during the 2017 calendar year of the notice required under s. 194.011(1), F.S. Notwithstanding s. 194.013, F.S., the applicant is not required to pay a filing fee for such petition. Upon review of the petition, the value adjustment board shall grant the exemption if it determines the applicant is qualified and has demonstrated the existence of extenuating circumstances warranting the exemption.

Section 3 of the bill specifies that the act operates retroactively to January 1, 2017.

Section 4 of the bill provides that it takes effect upon becoming a law.

[31] A claim for refund may not be granted unless the claim is made within 4 years after January 1 of the tax year for which the taxes were paid.
[32] A person convicted of a misdemeanor of the first degree may be sentenced by a definite term of imprisonment not exceeding 1 year.

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 mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was $2 million or less.[33,34,35]

The bill reduces counties' and municipalities' authority to raise revenue by reducing ad valorem tax bases compared to the tax bases that would exist under current law. However, the bill is expected to have an insignificant impact on counties and municipalities.

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 governments' property tax revenues by $2.88 million per year, beginning in Fiscal Year 2017-2018. Of the $2.88 million impact, the impact to schools is $1.24 million and the impact to counties and municipalities is $1.64 million.

B. Private Sector Impact:

Homestead owners who were totally and permanently disabled in the line of duty as a first responder will pay less property taxes.

C. Government Sector Impact:

None.

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[33] FLA. CONST. art. VII, s. 18(d).

[34] 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 April 24, 2017).

[35] 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 April 24, 2017).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.011 of the Florida Statutes.

This bill creates section 196.102 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Appropriations on April 25, 2017:
The committee substitute:

- Deletes the definition of "disabled" and inserts a new definition for "total and permanent disability";
- Allows an applicant to qualify for the exemption by providing an employer certificate and demonstrating that the applicant qualifies for the totally and permanently disabled exemption in s. 196.081, F.S.;
- Requires applicants to obtain a disability determination from the Social Security Administration;
- Reduces the number of physician certifications from 2 to 1, except when the applicant does not qualify for a disability determination by the Social Security Administration; and
- Deletes an unnecessary grant of permanent rulemaking authority for the Department of Revenue.

CS/CS by Community Affairs on March 22, 2017:

- Revises the physician's required certification form to include disclaimers to the taxpayer and physician;
- Removes a provision that extended the deadline for a property appraiser to serve notice setting his or her grounds for denial of the exemption in certain circumstances; and
- Makes a technical change for the act to apply retroactively, rather than prospectively, to the 2017 tax roll.

CS by Governmental Oversight and Accountability on March 6, 2017:

- Leaves s. 196.091(6), F.S.,(exemption for surviving spouse of first responder who dies in the line of duty) where it is in statute and does not move this exemption to newly created s. 196.02, F.S.;
- Adds definition of "cardiac event" and revises definition of "in the line of duty";

- Revises application requirements to remove Department of Veteran Affairs as an option for providing physician letter;
- Revises application procedures to allow first responder to deliver employer certification to property appraiser;
- Revises procedures for denying exemption by property appraiser and provides additional time to issue notice of denial from date of application; and
- Changes effective date from July 1, 2017, to effective upon becoming a law.

B. Amendments:

None.

By the Committees on Community Affairs; and Governmental Oversight and Accountability; and Senator Baxley

578-02732-17 2017764c2

A bill to be entitled

An act relating to ad valorem taxation; amending s. 196.011, F.S.; specifying the information to be included in an application for certain tax exemptions; creating s. 196.102, F.S.; providing definitions; providing an exemption from ad valorem taxation for certain first responders under specified conditions; providing an exemption from ad valorem taxation for certain surviving spouses of first responders who have died; specifying the documentation required to receive the exemption; providing a criminal penalty for knowingly or willingly giving false information for a certain purpose; granting rulemaking authority; specifying a deadline for applying for the exemption; authorizing property appraisers, under certain circumstances, to grant exemptions for untimely filed applications; providing procedures and requirements for petitioning value adjustment boards regarding denied exemptions; providing retroactive applicability; providing construction; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.—

(1)

(b) The form to apply for an exemption under s. 196.031, s. 196.081, s. 196.091, s. 196.101, s. 196.102, s. 196.173, or s. 196.202 must include a space for the applicant to list the social security number of the applicant and of the applicant's spouse, if any. If an applicant files a timely and otherwise complete application, and omits the required social security numbers, the application is incomplete. In that event, the property appraiser shall contact the applicant, who may refile a complete application by April 1. Failure to file a complete application by that date constitutes a waiver of the exemption privilege for that year, except as provided in subsection (7) or subsection (8).

Section 2. Section 196.102, Florida Statutes, is created to read:

196.102 Exemption for certain totally and permanently disabled first responders and their surviving spouses.—

(1) As used in this section, and not applicable to the payment of benefits under s. 112.19 or s. 112.191, the term:

(a) "Disabled" means a physical or cognitive impairment that constitutes or results in a substantial impediment to employment as a first responder. The term does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.

(b) "First responder" means a law enforcement officer or correctional officer as defined in s. 943.10, a firefighter as defined in s. 633.102, or an emergency medical technician or paramedic as defined in s. 401.23 who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

(c) "Cardiac event" means a heart attack, stroke or

vascular rupture.

(d) "In the line of duty" means:

1. While engaging in activities within the course and scope of employment as a first responder;

2. While performing an activity relating to fire suppression and prevention;

3. While responding to a hazardous material emergency;

4. While performing rescue activity;

5. While providing emergency medical services;

6. While performing disaster relief activity;

7. While otherwise engaging in emergency response activity; or

8. While engaging in a training exercise related to any of the events or activities enumerated in this paragraph if the training has been authorized by the employing entity.

(2) Any real estate that is owned and used as a homestead by a person who is totally and permanently disabled as a result of an injury or injuries sustained in the line of duty while serving as a first responder is exempt from taxation if the first responder is a permanent resident of this state on January 1 of the tax year for which the exemption is being claimed.

(3) The following documents, if provided to the property appraiser of the county where the property is located, serve as prima facie evidence that the first responder is entitled to the exemption:

(a) A certificate of total and permanent disability, in the form set forth in subsection (7), from two licensed physicians of this state who are professionally unrelated, attesting to the applicant's total and permanent disability.

(b) A certificate from the organization that employed the first responder at the time that the injury or injuries occurred. The employer certificate must contain, at a minimum, the information identified in subsection (8). The employer certificate shall be supplemented with extant documentation of the incident or event that caused the injury, such as an accident or incident report. The first responder may deliver the original employer certificate to the property appraiser's office or the first responder's employer may directly transmit the employer certificate to the applicable property appraiser.

Total and permanent disability that results from a cardiac event does not qualify for the exemption provided in this section unless the cardiac event occurs no later than 24 hours after the first responder performed nonroutine stressful or strenuous physical activity in the line of duty and the first responder provides the employer with competent medical evidence showing that:

1. The nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the first responder's total and permanent disability; and

2. The cardiac event was not caused by preexisting vascular disease.

(4)(a) Any real estate owned and used as a homestead by the surviving spouse of a first responder who died but who had been receiving a tax exemption under subsection (2), is exempt from taxation.

(b) The tax exemption provided in paragraph (a) applies as long as the surviving spouse holds the legal or beneficial title

to the homestead, permanently resides thereon as specified in s. 196.031, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted under the most recent ad valorem tax roll may be transferred to the new residence if it is used as the surviving spouse's primary residence and he or she does not remarry.

(5) A first responder may apply for the exemption before producing the necessary documentation described in paragraphs (3)(a) or (b). Upon receipt of the documentation, the exemption shall be granted as of the date of the original application and the excess taxes paid shall be refunded. Any refund of excess taxes paid shall be limited to those paid during the 4-year period of limitation set forth in s. 197.182(1)(e).

(6) The provisions of s. 196.011(9) waiving the requirement that an annual application be submitted to the property appraiser and providing lien authority are applicable to applications submitted pursuant to this section.

(7) The physician's certification shall read as follows:

PHYSICIAN'S CERTIFICATION OF
TOTAL AND PERMANENT DISABILITY

I,...(name of physician)..., a physician licensed pursuant to chapter 458 or chapter 459, Florida Statutes, hereby certify that Mr.....Mrs.....Miss.... Ms.....(applicant name and social security number)..., is totally and permanently disabled, due to the following mental or physical condition(s):

...(Physical or cognitive impairment that constitutes or results

in a substantial impediment to employment as a first responder)...

...(Chronic condition or chronic disease solely caused by an injury sustained in the line of duty as a first responder)...

It is my professional belief that the above-named condition(s) render Mr.....Mrs.....Miss.... Ms.....(applicant name)... totally and permanently disabled, and that the foregoing statements are true, correct, and complete to the best of my knowledge and professional belief.

Signature....
Address...(print)...
Date....
Florida Board of Medicine or Osteopathic Medicine license number
Issued on.....

NOTICE TO TAXPAYER: Each Florida resident applying for an exemption due to a disability that occurred in the line of duty while serving as a first responder must present to the county property appraiser a copy of this form and a letter from the employer for whom the first responder worked at the time of the injury, as required by section 196.102(8), Florida Statutes. Each form is to be completed by a licensed Florida physician.

NOTICE TO TAXPAYER AND PHYSICIAN: Section 196.131(2), Florida Statutes, provides that any person who knowingly and willingly gives false information for the purpose of claiming homestead exemption commits a misdemeanor of the first degree, punishable

by a term of imprisonment not exceeding 1 year or a fine not exceeding $5,000, or both.

(8) An employer for whom the first responder worked at the time of the injury must provide a certificate that, at a minimum, attests and includes:

(a) The title of the person signing the certificate.

(b) The name and address of the employing entity.

(c) A description of the incident that caused the injury or injuries.

(d) A statement that the first responder's injury or injuries were:

1. Directly and proximately caused by service in the line of duty.

2. Without willful negligence on the part of the first responder.

3. The sole cause of the first responder's total and permanent disability.

(9) Any person who knowingly or willfully gives false information for the purpose of claiming homestead exemption as set forth in this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or by fine of not more than $5,000, or both.

(10) The Department of Revenue may, and all conditions are deemed to be met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54 to administer the application process for the 2017 calendar year. This subsection is repealed on August 30, 2018.

(11) The Department of Revenue may adopt rules to administer this section.

(12) Notwithstanding s. 196.011 and this section, the deadline for a first responder to file an application with the property appraiser for an exemption under this section for the 2017 tax year is August 1, 2017.

(13) If an application is not timely filed under subsection (12), a property appraiser may grant the exemption if:

(a) The applicant files an application for the exemption on or before the 25th day after the mailing of the notice required under s. 194.011(1) by the property appraiser during the 2017 calendar year;

(b) The applicant is qualified for the exemption; and

(c) The applicant produces sufficient evidence, as determined by the property appraiser, which demonstrates that the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrates extenuating circumstances that warrant granting the exemption.

(14) If the property appraiser denies an exemption under subsection (12) or subsection (13), the applicant may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting the exemption be granted. Notwithstanding s. 194.013, the eligible first responder is not required to pay a filing fee for such petition filed on or before December 31, 2017. Upon review of the petition, the value adjustment board shall grant the exemption if it determines the applicant is qualified and has demonstrated the existence of extenuating circumstances warranting the exemption.

Section 3. This act operates retroactively to the 2017 tax roll and does not provide a basis for relief from an assessment of taxes not paid or create a right to a refund of taxes paid

before January 1, 2017.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/CS/SB 776
INTRODUCER:	Communications, Energy, and Public Utilities Committee; Criminal Justice Committee; and Senator Baxley
SUBJECT:	Unlawful Acquisition of Utility Services
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	**Fav/CS**
2.	Caldwell	Caldwell	CU	**Fav/CS**
3.	McAuliffe	Sadberry	ACJ	**Recommend: Favorable**
4.	McAuliffe	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 776 revises provisions relating to utility theft as follows:

- Requires a court to include certain specified amounts in its order for civil damages or restitution related to the theft and labor costs.
- Allows the state to make a prima facie showing of the estimated losses of unlawfully obtained electric services based on any methodology reasonably relied upon by utilities.
- Allows the methodology to consider the estimated start date of the theft and the estimated daily or hourly use of electricity.
- Provides specified criteria to determine the estimated start date of the theft and the estimated daily or hourly use of electricity.
- Requires that once the state has made a prima facie showing the burden shifts to the defendant to demonstrate that the loss is something other than that claimed by the utility.
- Allows the court to order a defendant to pay restitution for damages to the property of a utility or for the theft of electricity for criminal offenses that are causally connected to the utility theft.

The bill may have a positive fiscal impact on public and private utilities to the extent that additional restitution is made to those utilities relating to theft of utilities.

The bill is effective October 1, 2017.

II. Present Situation:

Theft of Utilities and Marijuana

As the cost of electricity increases, the rate of theft of electricity goes up.[1] The utility industry estimates that energy theft losses are $6 billion a year.[2] In Canada, the majority of electricity theft comes from the indoor cultivation of marijuana. The United States and Florida in particular are seeing an increase in indoor marijuana grow operations.[3]

A man in Tampa was arrested for growing marijuana and stealing over $4,500 in electricity over a 3-month period. Authorities discovered an illegal tap was supplying the unmetered power to the house where the man was growing marijuana.[4] In Brooksville, Florida, the Withlacoochee River Electric Cooperative informed the Hernando County Sheriff's Office of three different locations where irregular power usage had been detected. The sheriff's office executed search warrants and found extensive marijuana grow operations at all three locations. The cooperative approximated that its total loss due to the theft and labor costs for all three locations was over $143,000.[5]

Section 812.14, F.S., Theft of Utilities

A utility is any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

Section 812.14(2), F.S., makes it a crime to:

- Willfully alter, tamper with, injure, or knowingly cause to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service which causes loss or damage or to prevent any meter installed for registering from registering the quantity used;
- Alter the index or break the seal of any meter;
- Hinder or interfere with any meter or device; or
- Knowingly use, waste, or cause the waste of electricity or gas or water passing through any meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging

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[1] dTechs Electrical Profile Management, *Power Theft*, available at http://www.dtechsepm.com/power-theft (last visited March 16, 2017).
[2] myPalmBeachPost, *Smart meters help FPL catch more electricity thieves*, Susan Salisbury, (May 8, 2016) available at http://www.mypalmbeachpost.com/business/smart-meters-help-fpl-catch-more-electricity-thieves/QyE2N4vDV4Mm0WwjQukoXL/ (last visited March 16, 2017).
[3] *Supra* note 1.
[4] Tampa Bay Times, *Man charged with trafficking, growing marijuana using stolen electricity*, (March 20, 2016), available at http://www.tampabay.com/news/publicsafety/crime/man-arrested-for-trafficking-growing-marijuana-using-stolen-electricity/2270101 (last visited March 16, 2017).
[5] REALNEWSREALFAST, *Three Charged in Large Marijuana Grow Operation, Nearly $60K in Stolen Power*, Tom Lemons, (June 23, 2016), available at http://www.rnrfonline.com/three-charged-in-large-marijuana-grow-operation-nearly-60k-in-stolen-power/ (last visited March 16, 2017).

to any utility, after the meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.[6]

It is also a crime to:

- Make or cause a connection to be made with any wire, main, service pipe or other pipes, appliance, or appurtenance without the consent of the utility and take any service or electricity, gas, or water without the service being measured and reported for payment; or
- Use or receive the direct benefit from the use of a utility with the knowledge, or under such circumstances that would induce a reasonable person to believe, that such use resulted from tampering, altering, or injuring any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by the utility, for the purpose of avoiding payment.[7]

The penalties for the above-described crimes are based on the value of theft. A theft of utilities valued at:

- $100,000 or more is a first degree felony;[8]
- $20,000 or more but less than $100,000 is a second degree felony;[9]
- $300 or more but less than $20,000 is a third degree felony;[10]
- $100 or more but less than $300 is a first degree misdemeanor;[11] and
- Under $100 is a second degree misdemeanor.[12]

When a person who is in actual possession of property where a devise or alteration affecting the registration or reporting of the use of utility services to avoid payment is present, it is prima facie evidence of a violation of s. 812.14, F.S. This presumption does not apply unless the:

- Presence of the device or alteration can be attributed to a deliberate act in furtherance of an intent to avoid payment for utility services;
- Person charged has received the direct benefit of the reduction of the cost of the utility services; and
- Customer or recipient of the utility services has received the direct benefit of the utility service for at least one full billing cycle.[13]

It is a first degree misdemeanor for a person or entity that owns, leases, or subleases property to allow a tenant or occupant to use utility services knowing, or under such circumstances that a

[6] Section 812.14(2)(a), F.S.
[7] Section 812.14(2)(b) and (c), F.S.
[8] Section 812.014(2)(a)1., F.S. A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[9] Section 812.014(2)(b)1., F.S. A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[10] Section 812.014(2)(c), F.S. A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.
[11] Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by up to 1 year in jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.
[12] Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in county jail and a $500 fine. Sections 775.082 and 775.083, F.S.
[13] Section 812.14(3), F.S.

reasonable person would believe, that the utility services have been connected in one of the above listed ways.[14] It is prima facie evidence of a person's intent to violate this provision if:

- A controlled substance and materials for manufacturing the controlled substance intended for sale or distribution to another were found in a dwelling or structure;
- The dwelling or structure has been visibly modified to accommodate the use of equipment to grow marijuana indoors, including, but not limited to, the installation of equipment to provide additional air conditioning, equipment to provide high-wattage lighting, or equipment for hydroponic cultivation; and
- The person or entity that owned, leased, or subleased the dwelling or structure knew of, or under such circumstances believed, that there was a controlled substance and materials for manufacturing a controlled substance in the dwelling or structure, regardless of whether the person or entity was involved in the manufacture or sale of a controlled substance or was in actual possession of the dwelling or structure.[15]

Theft of Utility Services for the Purpose of Facilitating the Manufacture of a Controlled Substance

Theft of utility services for the purpose of facilitating the manufacture of a controlled substance is punishable as a theft under s. 812.014, F.S.[16] There is prima facie evidence of a person's intent to violate this provision if:

- The person committed theft of utility services that resulted in a dwelling or structure receiving unauthorized access to utility services;[17]
- A controlled substance and materials for manufacturing the controlled substance were found in the dwelling or structure; and
- The person knew of the presence of the controlled substance and materials for manufacturing the controlled substance in the dwelling or structure, regardless of whether the person was involved in the manufacture of the controlled substance.[18]

Public Service Commission Rule 25-6.104, F.A.C.

The Public Service Commission regulates the utilities in Florida through market oversight, monitoring the safety, reliability, and services of the utilities and rate base, and economic regulation.[19] The Public Service Commission rules allow a utility to bill a customer in the event of unauthorized or fraudulent use, or meter tampering. The utility may bill for a reasonable estimate of the energy that was used.[20]

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[14] Section 812.14(5), F.S.
[15] Section 812.14(6), F.S.
[16] Section 812.14(8), F.S.
[17] Section 810.011, F.S., defines "dwelling" as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof; and a "structure" as a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. ("Curtilage" means the area of land occupied by a dwelling and its yard and outbuildings actually enclosed or considered as enclosed.)
[18] Section 812.14(9), F.S.
[19] My Florida, Public Service Commission, *The PSC's Role*, available at http://www.psc.state.fl.us/ (last visited March 16, 2017).
[20] Rule 25-6.104, F.A.C.

Civil Damages

In a civil action, any person who is found to have committed an offense in s. 812.14, F.S., is liable to a utility involved for an amount equal to three times the amount of the services unlawfully obtained or $3,000, whichever is greater.[21]

Restitution in a Criminal Case

Section 775.089, F.S., requires a court to order a defendant to make restitution to the victim for:
- Damage or loss caused directly or indirectly by the defendant's offense; and
- Damage or loss related to the defendant's criminal episode.

When a court determines whether to order restitution and the amount of restitution, it must consider the amount of the loss sustained by the victim because of the offense.[22]

III. Effect of Proposed Changes:

The bill provides that prima facie evidence includes:
- Person knew ***or should have known*** of the presence of the controlled substance and materials for manufacturing the controlled substance in the dwelling or structure.

The bill requires a court to include the following amounts in its order for civil damages under s. 812.14(10), F.S., or criminal restitution for theft of electricity:
- The costs to repair or replace damaged property owned by a utility, including reasonable labor costs.
- Reasonable costs for the use of specialized equipment to investigate or calculate the amount of unlawfully obtained electric services, including reasonable labor costs.
- The amount of unlawfully obtained electric services.

The bill allows the state or a utility to make a prima facie showing of the estimated losses of unlawfully obtained electric services based on any methodology reasonably relied upon by utilities. The methodology may consider the estimated start date of the theft and the estimated daily or hourly use of electricity.

The estimated start date of a theft may be based upon one or more of the following:
- The date of an overload notification from a transformer, or the tripping of a transformer, that the utility reasonably believes was overloaded because of the theft of electricity.
- The date the utility verified a substantive difference between the amount of electricity used at a property and the amount billed to the accountholder.
- The date the utility or a law enforcement officer located a tap or other device bypassing a meter.
- The date the utility or a law enforcement officer observed or verified meter tampering.
- The maturity of a cannabis crop found in a dwelling or structure using unlawfully obtained electric services or the number of cannabis crops the utility or a law enforcement officer reasonably believes to have been grown in the dwelling or structure.

[21] Section 812.14(10), F.S.
[22] Section 775.089(6)(a), F.S.

- The date the utility or a law enforcement agency received a report of suspicious activity potentially indicating the presence of the unlawful cultivation of cannabis in a dwelling or structure or when a law enforcement officer or an employee or contractor of a utility observes such suspicious activity.
- The date when a utility observes a significant change in metered energy usage.
- The date when an account with the utility was opened for a property that receives both metered and unlawfully obtained electric services.
- Any other facts or data reasonably relied upon by utilities to estimate the start date of a theft of electricity.

The estimated average daily or hourly use of the electricity may be based upon any, or a combination, of the following:

- The load imposed by the fixtures, appliances, or equipment powered by unlawfully obtained electric services.
- Recordings by the utility of the amount of electricity used by a property or the difference between the amount used and the amount billed.
- A comparison of the amount of electricity historically used by the property and the amount billed while the property was using unlawfully obtained electricity.
- A reasonable analysis of a meter that was altered or tampered with to prevent the creation of an accurate record of the amount of electricity obtained.
- Any other facts or data reasonably relied upon by utilities to estimate the amount of unlawfully obtained electric services.

Once the state or a utility has made a prima facie showing, the burden shifts to the defendant to demonstrate that the loss is something other than that claimed by the utility.

The bill allows the court to order a defendant to pay restitution for damages to the property of a utility or for the theft of electricity for criminal offenses that are causally connected to the damages or losses and bear a significant relationship to those damages or losses. A conviction for theft of utilities is not required for the court to issue a restitution order.

The bill specifies the criminal offenses that bear a significant relationship and are causally connected to a violation of s. 812.14, F.S., include, but are not limited to, offenses relating to the unlawful cultivation of cannabis in a dwelling or structure if the theft of electricity was used to facilitate the growth of the cannabis.

The monetary threshold of any criminal charge does not limit the restitution amount that a defendant may be ordered to pay.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or

municipalities have to raise revenues in the aggregate as such authority existed on February 1, 1989; or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill specifies that criminal offenses that bear a significant relationship, and are causally connected, to a violation of s. 812.14, F.S., include, but are not limited to, offenses relating to the unlawful cultivation of cannabis in a dwelling or structure if the theft of electricity was used to facilitate the growth of the cannabis. Section 775.089, F.S., requires, in a restitution hearing, the state to prove the causal relationship between the defendant's offense and the damages or losses. In *J.S.H. v. State*, 472 So.2d 737, 738 (Fla. 1985), the Florida Supreme Court found that the offense charged does not have to describe the damage done for restitution to be ordered, but that the "damage bear a significant relationship to the convicted offense." If the bill allows restitution to be ordered for the theft of utility services when these requirements are not met, it may be found unconstitutional.

Section 775.089(7), F.S., requires that the state prove the amount of loss sustained by a victim by the preponderance of the evidence. The bill specifies that once the state has made a prima facie showing the burden shifts to the defendant to demonstrate that the loss is something other than that claimed by a utility. If this provision shifts the burden to the defendant without the state having to prove the amount of loss by the preponderance of the evidence, and if the bill treats these defendants differently than any other defendant in a restitution hearing, the bill could be found unconstitutional.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill allows the state to seek restitution for utilities for criminal offenses that are causally connected to the damages or losses and bear a significant relationship to those damages or losses. This may result in an indeterminate positive fiscal impact on utilities.

The bill allows utilities to estimate losses of unlawfully obtained electric services based on any reasonably used utility methodology. Utilities could use a methodology that

results in the largest estimate of loss, which could have an indeterminate positive fiscal impact on those utilities.

C. Government Sector Impact:

The bill allows the state to seek restitution for utilities in criminal offenses that are causally connected to the damages or losses and bears a significant relationship to those damages or losses. This may result in a positive indeterminate fiscal impact on public utilities.

The bill allows utilities to estimate losses of unlawfully obtained electric services based on any reasonably used utility methodology. Utilities could use a methodology that results in the largest estimate of loss, which could have an indeterminate positive fiscal impact on public utilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In several instances, the bill provides certain criteria for a prima facie showing that can be used to prove start date of theft or estimated use. Those criteria are "that the utility reasonably believes[23]" and "reasonably relied upon by utilities.[24]" This standard suggests that if the utility believes the evidence is reasonable, such evidence meets the prima facie showing. This standard is different from a more general standard of whether it is reasonable for the utility to rely on such evidence or that the court finds to be reasonable. While all are subjective, the latter standards are less so.

VIII. Statutes Affected:

This bill substantially amends section 812.14 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 Communications, Energy, and Public Utilities Committee on March 28, 2017:
The committee substitute reverts the penalty from grand theft back to current law.

CS by Criminal Justice on March 21, 2017:
The committee substitute:

- Removes the references "of a diversion" because s. 812.14, F.S., does not criminalize such behavior or define it.

[23] Section 812.14(11)(b)1.a. and (11)(b)2.e., F.S., of the bill.
[24] Section 812.14(11)(b)1.i., F.S., of the bill.

- Replaces the term "grow house" with the terms "dwelling" and "structure" to provide consistency throughout s. 812.14, F.S.
- Deletes proposed changes that would have included a person acting on the behalf of an owner, lessor, or sublessor as a person who could violate s. 812.14(5), F.S.
- Deletes the proposed change that replaced the term "prima facie evidence" with the term "permissive inference."
- Provides that theft of utility services for the purpose of facilitating the manufacture of a controlled substance is a grand theft punishable under s. 812.014, F.S.
- Removes the requirement that the amount of taxes be included in a court's civil damages or restitution order.
- Deletes the proposed change that allowed the number of cannabis crops that could have reasonably been grown to be used to determine the start date of the utility theft.
- Makes technical and stylistic changes.

Changes the effective date from July 1, 2017, to October 1, 2017.

B. Amendments:

None.

By the Committees on Communications, Energy, and Public Utilities; and Criminal Justice; and Senator Baxley

579-02988-17 2017776c2

A bill to be entitled

An act relating to the unlawful acquisition of utility services; amending s. 812.14, F.S.; revising the elements that constitute theft of utilities; clarifying that the presence of certain devices and alterations on the property of, and the actual possession by, a person constitutes prima facie evidence of a violation; clarifying that certain evidence of the manufacturing of a controlled substance in a leased dwelling constitutes prima facie evidence of a violation by an owner, lessor, sublessor; clarifying that specified circumstances create prima facie evidence of theft of utility services for the purpose of facilitating the manufacture of a controlled substance; revising such circumstances; specifying the types of damages that may be recovered as civil damages or restitution in a criminal case for damaging property of a utility or for the theft of electricity services; specifying the methods and bases used to determine and assess damages in a civil action or restitution in a criminal case for damaging property of a utility or for the theft of electricity services; providing an effective date.

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

Section 1. Section 812.14, Florida Statutes, is amended to read:

812.14 Trespass and larceny with relation to utility

579-02988-17 2017776c2

fixtures; theft of utility services.—

(1) As used in this section, "utility" includes any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

(2) A person may not ~~It is unlawful to~~:

(a) Willfully alter, tamper with, damage ~~injure~~, or knowingly allow damage to a ~~suffer to be injured any~~ meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; ~~to~~

(b) Alter the index or break the seal of any such meter; ~~in any way to~~

(c) Hinder or interfere in any way with the proper action or accurate ~~just~~ registration of any such meter or device; ~~or~~

(d) Knowingly ~~to~~ use, waste, or allow ~~suffer~~ the waste of, by any means, ~~of~~ electricity, ~~or~~ gas, or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after the ~~such~~ meter, wire, pipe, or fitting, or other appliance or appurtenance has been tampered with, injured, or altered; ~~.~~

(e) ~~(b)~~ Connect ~~Make~~ or cause a ~~to be made any~~ connection with a ~~any~~ wire, main, service pipe or other pipes, appliance, or appurtenance in a ~~such~~ manner that uses ~~as to use~~, without

the consent of the utility, any service or any electricity, gas, or water;~~, or to~~

(f) Cause a utility, without its consent, to supply any ~~to be supplied any~~ service or electricity, gas, or water ~~from a utility~~ to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet ~~whatsoever,~~ without reporting the ~~such~~ service ~~being reported~~ for payment; ~~or~~

(g) Cause, without the consent of a utility, ~~such~~ electricity, gas, or water to bypass ~~passing through~~ a meter provided by the utility; or ~~and used for measuring and registering the quantity of electricity, gas, or water passing through the same.~~

(h) ~~(c)~~ Use or receive the direct benefit from the use of a utility knowing, or under ~~such~~ circumstances that ~~as~~ would induce a reasonable person to believe, that the ~~such~~ direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility, for the purpose of avoiding payment.

(3) The presence on the property of and ~~in~~ the actual possession by ~~of~~ a person of any device or alteration that prevents ~~affects the diversion or use of the services of a utility so as to avoid~~ the registration of the ~~such~~ use of services by ~~or on~~ a meter installed by the utility or that avoids ~~so as to otherwise avoid~~ the reporting of the use of services ~~such service~~ for payment is prima facie evidence of the violation of subsection (2) ~~this section~~ by such person.~~,~~ However, this presumption does not apply unless:

(a) The presence of the ~~such a~~ device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility services;

(b) The person charged has received the direct benefit of the reduction of the cost of the ~~such~~ utility services; and

(c) The customer or recipient of the utility services has received the direct benefit of the ~~such~~ utility service for at least one full billing cycle.

(4) A person who willfully violates subsection (2) ~~paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c)~~ commits theft, punishable as provided in s. 812.014.

(5) ~~It is unlawful for~~ A person or entity that owns, leases, or subleases a property may not ~~to~~ permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation of subsection (2) ~~paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c)~~.

(6) It is prima facie evidence that an owner, lessor, or sublessor intended ~~It is prima facie evidence of a person's intent~~ to violate subsection (5) if:

(a) A controlled substance and materials for manufacturing the controlled substance intended for sale or distribution to another were found in a dwelling or structure;

(b) The dwelling or structure was ~~has been~~ visibly modified to accommodate the use of equipment to grow cannabis ~~marijuana~~ indoors, including, but not limited to, the installation of equipment to provide additional air conditioning, equipment to provide high-wattage lighting, or equipment for hydroponic

cultivation; and

(c) The person or entity that owned, leased, or subleased the dwelling or structure knew of, or did so under such circumstances as would induce a reasonable person to believe in, the presence of a controlled substance and materials for manufacturing a controlled substance in the dwelling or structure, regardless of whether the person or entity was involved in the manufacture or sale of a controlled substance or was in actual possession of the dwelling or structure.

(7) An owner, lessor, or sublessor ~~A person~~ who willfully violates subsection (5) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Prosecution for a violation of subsection (5) does not preclude prosecution for theft pursuant to subsection (8) or s. 812.014.

(8) Theft of utility services for the purpose of facilitating the manufacture of a controlled substance is theft, punishable as provided in s. 812.014.

(9) It is prima facie evidence of a person's intent to violate subsection (8) if:

(a) The person committed theft of utility services resulting in a dwelling, as defined in s. 810.011, or a structure, as defined in s. 810.011, receiving unauthorized access to utility services;

(b) A controlled substance and materials for manufacturing the controlled substance were found in the dwelling or structure; and

(c) The person knew or should have known of the presence of the controlled substance and materials for manufacturing the controlled substance in the dwelling or structure, regardless of

whether the person was involved in the manufacture of the controlled substance.

(10) Whoever is found in a civil action to have violated this section is liable to the utility involved in an amount equal to 3 times the amount of services unlawfully obtained or $3,000, whichever is greater.

(11)(a) For purposes of determining a defendant's liability for civil damages under subsection (10) or criminal restitution for the theft of electricity, the amount of civil damages or a restitution order must include all of the following amounts:

1. The costs to repair or replace damaged property owned by a utility, including reasonable labor costs.

2. Reasonable costs for the use of specialized equipment to investigate or calculate the amount of unlawfully obtained electricity services, including reasonable labor costs.

3. The amount of unlawfully obtained electricity services.

(b) A prima facie showing of the amount of unlawfully obtained electricity services may be based on any methodology reasonably relied upon by a utility to estimate such loss. The methodology may consider the estimated start date of the theft and the estimated daily or hourly use of electricity. Once a prima facie showing has been made, the burden shifts to the defendant to demonstrate that the loss is other than that claimed by the utility.

1. The estimated start date of a theft may be based upon one or more of the following:

a. The date of an overload notification from a transformer, or the tripping of a transformer, which the utility reasonably believes was overloaded as a result of the theft of electricity.

b. The date the utility verified a substantive difference between the amount of electricity used at a property and the amount billed to the account holder.

c. The date the utility or a law enforcement officer located a tap or other device bypassing a meter.

d. The date the utility or a law enforcement officer observed or verified meter tampering.

e. The maturity of a cannabis crop found in a dwelling or structure using unlawfully obtained electricity services the utility or a law enforcement officer reasonably believes to have been grown in the dwelling or structure.

f. The date the utility or a law enforcement agency received a report of suspicious activity potentially indicating the presence of the unlawful cultivation of cannabis in a dwelling or structure or the date a law enforcement officer or an employee or contractor of a utility observed such suspicious activity.

g. The date when a utility observed a significant change in metered energy usage.

h. The date when an account with the utility was opened for a property that receives both metered and unlawfully obtained electricity services.

i. Any other fact or data reasonably relied upon by the utility to estimate the start date of a theft of electricity.

2. The estimated average daily or hourly use of the electricity may be based upon any, or a combination, of the following:

a. The load imposed by the fixtures, appliances, or equipment powered by unlawfully obtained electricity services.

b. Recordings by the utility of the amount of electricity used by a property or the difference between the amount used and the amount billed.

c. A comparison of the amount of electricity historically used by the property and the amount billed while the property was using unlawfully obtained electricity.

d. A reasonable analysis of a meter that was altered or tampered with to prevent the creation of an accurate record of the amount of electricity obtained.

e. Any other fact or data reasonably relied upon by utilities to estimate the amount of unlawfully obtained electricity services.

(12) A court order requiring a defendant to pay restitution for damages to the property of a utility or for the theft of electricity need only be based on a conviction for a criminal offense that is causally connected to the damages or losses and bears a significant relationship to those damages or losses. A conviction for a violation of this section is not a prerequisite for a restitution order. Criminal offenses that bear a significant relationship and are causally connected to a violation of this section include, but are not limited to, offenses relating to the unlawful cultivation of cannabis in a dwelling or structure if the theft of electricity was used to facilitate the growth of the cannabis.

(13) The amount of restitution that a defendant may be ordered to pay is not limited by the monetary threshold of any criminal charge on which the restitution order is based.

(14)~~(11)~~ This section does not apply to licensed and certified electrical contractors while such persons are

performing usual and ordinary service in accordance with recognized standards.

Section 2. This act shall take effect October 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

24 Apr
Meeting Date

776
Bill Number (if applicable)

Topic UTILITY THEFT

Amendment Barcode (if applicable)

Name MIKE BJORKLUND (B-YORK-LUND)

Job Title DIR. OF LEG. AFFAIRS

Address 2916 APALACHEE PKWY
Street

Phone 877-6166

TLH 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 FL ELECTRIC COOPERATIVES 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 842 (326920)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Artiles and others
SUBJECT:	South Florida Regional Transportation Authority
DATE:	April 24, 2017 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 842 authorizes the South Florida Regional Transportation Authority (SFRTA) to enter into contractual indemnification agreements with All Aboard Florida (AAF) and Florida East Coast Railway (FECR) on a rail corridor owned by AAF or FECR and in which all three entities operate rail service. The bill authorizes the Florida Department of Transportation (FDOT or department) to assume the obligations to indemnify and insure under such contractual agreements any freight rail service, intercity passenger service, and commuter rail service on a department-owned rail corridor or on a rail corridor where the FDOT has the right to operate.

The bill also deems funds provided by the FDOT to the SFRTA to be state financial assistance subject to specified requirements. The bill requires the FDOT to provide funds to the SFRTA in accordance with a written agreement containing certain provisions and authorizes the FDOT to advance funds at the start of each fiscal year, with monthly payments from the State Transportation Trust Fund (STTF) to the SFRTA for maintenance and dispatch on the South Florida Rail Corridor (SFRC) over the fiscal year on a reimbursement basis.

An indeterminate negative fiscal impact on state government and the SFRTA is expected. See Section V., "Fiscal Impact Statement," for details.

The bill takes effect July 1, 2017.

II. Present Situation:

Freight Rail, Commuter Rail, and Intercity Passenger Rail

In 1988, the FDOT and CSX Transportation, Inc., (CSX) entered into an agreement under which the department bought approximately 81 miles of CSX track and right-of-way in order to operate commuter rail in South Florida. In 2003, the Legislature created the SFRTA, an agency of the state, as the successor to the Tri-County Commuter Rail Authority with all of its rights, privileges, and obligations.[1] The SFRTA is authorized to coordinate, develop, and operate a regional transportation system in the tri-county area of Broward, Miami-Dade, and Palm Beach Counties,[2] providing commuter rail service (Tri-Rail) for residents and visitors in the area served. The FDOT continues ownership of the SFRC, which runs parallel to I-95, extending south to Miami International Airport and north into Palm Beach County.

Florida East Coast Railway (FECR) owns[3] an existing rail corridor between Miami and Cocoa on which it operates freight rail service.[4] All Aboard Florida (AAF)[5], a subsidiary of the parent holding company of FECR, is currently developing an intercity express train service, called "Brightline," using the existing FECR corridor between Miami and Cocoa. AAF will build new track along State Road 528 between Cocoa and Orlando. Service between Miami and West Palm Beach is expected to be launched this year, with service from Miami to Orlando following.[6]

The SFRTA is planning to expand Tri-Rail service using the existing FECR corridor. Known as the "Tri-Rail Coastal Link," the project would reintroduce commuter service for passengers along an 85-mile stretch of the FECR corridor between downtown Miami and Jupiter, connecting 28 densely populated cities in east Miami-Dade, Broward, and Palm Beach Counties.[7] SFRTA's service on this link would share tracks with FECR's freight trains and AAF's Brightline, providing intercity passenger service. The SFRTA will have co-located stations with Brightline in Miami, Ft. Lauderdale, and West Palm Beach. AAF construction projects for the stations are at various stages.[8] AAF is reportedly unwilling to proceed with completion of Tri-Rail's portion of the Miami Central Station in part due to the absence of a contractual agreement to indemnify and insure FECR and AAF.[9]

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[1] Chapter 2003-159, L.O.F.
[2] Section 343.54, F.S.
[3] Florida East Coast Industries (FECI) is the holding company for FECR. Fortress Investment Group acquired FECI in 2007.
[4] *See* the FECR website available at: http://www.fecrwy.com/about. (Last visited March 17, 2017.)
[5] AAF is a wholly owned subsidiary of FECI. *See* the AAF website available at: http://www.allaboardflorida.com/. (Last visited March 17, 2017.)
[6] *See* the AAF website available at: http://www.allaboardflorida.com/. (Last visited March 17, 2017.)
[7] *See* the FDOT website available at: http://tri-railcoastallinkstudy.com/. (Last visited March 17, 2017.)
[8] *Supra* note 6.
[9] *See Legislative inaction, indemnification ruling impact Miami=Orlando rail service future*, May 28, 2016, available at: http://flarecord.com/stories/510745198-legislative-inaction-indemnification-ruling-impact-miami-orlando-rail-service-future. (Last visited March 17, 2017.)

Liability on Rail Corridors

Commuter rail operators often seek to use existing track or right-of-way, which is primarily owned by freight rail operators, because of the expense of building new rail infrastructure.[10] Consequently, commuter rail operators must enter into agreements with the freight rail operators regarding how they will access the right-of-way. The most common challenge that occurs during negotiations between the commuter rail operator and the freight rail operator is determining liability.[11]

The introduction of commuter trains on rail corridors that were previously used exclusively for freight operations inherently raises the freight operators' risk of liability due to the increased number of persons and trains present within the corridor. Accordingly, most freight rail operators want the commuter rail operator to assume all risks associated with the presence of the commuter rail service. Freight rail operators refer to this as the "but for" argument – "but for the presence of the commuter rail service, the freight railroad would not be exposed to certain risks; therefore, the freight railroads should be held harmless."[12] Recognizing the exposure of liability for both parties, Congress passed the Amtrak Reform and Accountability Act of 1997, which limited the aggregate overall damage liability to all passengers from a single accident to $200 million.[13]

When Congress created Amtrak in 1970,[14] Amtrak contracted with freight railroads to operate passenger rail service within freight corridors. These agreements were predicated on a no-fault allocation of liability. For example, a typical agreement indemnified the freight operators for "any injury, death or property damage to any Amtrak employees, Amtrak property or Amtrak passengers," and the freight operators would also indemnify and hold harmless Amtrak for "any injury, death or property damage" to freight employees and property.[15] According to one report, despite this language, some courts have held that the provisions do not apply in cases of gross negligence.[16]

Florida Rail Liability Provisions

In 2007, the FDOT entered into an agreement with CSX Transportation, Inc., (CSX) to purchase 61.5 miles of track or right-of-way in Central Florida to provide commuter rail service, contingent on passage of legislation containing certain indemnification provisions. Known as SunRail, the first phase of the project opened in 2014, connecting DeBary in Volusia County to

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[10] U.S. General Accounting Office, *Commuter Rail: Information and Guidance Could Help Facilitate Commuter and Freight Rail Access Negotiations*, Report GAO-04-240, 5 (Jan. 2004), *available at* http://www.gao.gov/assets/250/240916.html. (Last visited March 17, 2017).
[11] *Id.* at 17.
[12] *Id.* at 18.
[13] *Id*.
[14] Congress passed the Rail Passenger Service Act of 1970, creating Amtrak to take over passenger rail service and relieving freight railroads of the responsibility of providing passenger service. U.S. General Accounting Office, *supra* note 10, at 8.
[15] *See* the Transportation and Economic Development Appropriations staff analysis of HB 1-B, Engrossed 1, at 4., available at: http://archive.flsenate.gov/data/session/2009B/Senate/bills/analysis/pdf/2009h0001B.ta.pdf. (Last visited March 17, 2017.)
[16] Center for Transportation Research, The University of Texas at Austin, *Passenger Rail Sharing Freight Infrastructure: Creating Win-Win Agreements*, Project Summary Report 0-5022-S, 3 (March 2006), available at: http://ctr.utexas.edu/wp-content/uploads/pubs/0_5022_S.pdf. (Last visited March 17, 2017.)

Sand Lake Road in Orange County and featuring 12 Central Florida stations.[17] Today, the FDOT operates the SunRail system, and CSX continues to operate freight trains in the corridor.

In 2009,[18] the Legislature authorized the FDOT in s. 341.302, F.S., to contractually indemnify a freight rail operator and the National Railroad Passenger Corporation (Amtrak) for any loss, injury, or damage to commuter rail passengers or rail corridor invitees, regardless of circumstances or cause, including negligence, misconduct, nonfeasance, or misfeasance. The contractual indemnification, however, is subject to the following parameters and exceptions:[19]

- If only a freight train is involved in an incident, the freight rail operator is solely responsible (pays 100 percent) for any loss, injury, or damage to its property and people, as well as for losses related to incidents involving trespassers and grade crossings. The department pays for loss, injury, or damage to any commuter rail passengers or invitees.
- If only an FDOT train (or "other train," as explained below) is involved in an incident, FDOT is solely responsible (pays 100 percent) for any loss, injury, or damage to its property and people, as well as for losses related to commuter rail passengers, rail corridor invitees, trespassers, and grade crossings.
    - Any train that is neither FDOT's train nor the freight rail operator's train is considered an "other train." An "other train" is treated as an FDOT train solely for purposes of allocation of liability between DOT and the freight rail operator, as long as FDOT and the freight rail operator share responsibility equally as to third parties injured outside the rail corridor.
- If both a freight train and an FDOT train, or a freight train and an "other train," are involved in an accident, the freight rail operator is solely responsible (pays 100 percent) for its property and all of its people. The freight rail operator and FDOT share responsibility one-half each (each pays 50 percent) for any third-party damage resulting outside the corridor or for damage relating to trespassers. The department is solely responsible (pays 100 percent) for its property and all of its people, including commuter rail passengers and invitees, except in certain cases involving willful misconduct or resulting in the award of punitive or exemplary damages, as explained below.
    - When there is a collision between an FDOT train and a freight train only and the freight rail operator's conduct amounts to willful misconduct or results in the award of punitive or exemplary damages, FDOT pays amounts in excess of its insurance deductible or self-insurance fund only if the freight rail operator pays for the amount of the insurance deductible or self-insurance fund (which is capped at $10 million).
- If an FDOT train, a freight train, and any "other train" are involved in an incident, the allocation of liability remains one-half each between FDOT and the freight rail operator for any loss, injury, or damage to third parties outside the rail corridor. If the "other train" makes any payment to third parties injured outside the corridor, the allocation of credit shall not reduce the freight rail operator's allocation to less than one-third of the total third-party liability.

[17] *See* the SunRail website available at: http://corporate.sunrail.com/stations-trains/phase-1-stations/ (last visited February 14, 2017).
[18] Chapter 2009-271, L.O.F.
[19] *See* s. 341.302(17), F.S., relating to the FDOT's grants of authority with respect to the acquisition, ownership, construction, operation, maintenance, and management of a rail corridor.

Additionally, in a freight-train-only accident, the freight rail operator is solely responsible for all damages relating to incidents with trespassers or at grade crossings. In an FDOT-train-only accident, the department is solely responsible for all damages relating to incidents with trespassers or at grade crossings. In an incident involving an FDOT train (or an "other train") and a freight train, the department and the freight rail operator share responsibility one-half each as to damages to trespassers and third parties outside the rail corridor; however, the statute does not address liability for damages relating to incidents at grade crossings.

The department's duty to indemnify a freight rail operator is capped at $200 million. The department is required to purchase up to $200 million in liability insurance and establish a self-insurance retention fund to cover any deductible, provided that any parties covered under the insurance must pay a reasonable monetary contribution to cover the cost of the insurance. The self-insurance fund or deductible shall not exceed $10 million. The insurance and self-insurance retention fund may provide coverage for all damages, including punitive damages.

SFRTA Funding

Statutory provisions require each of the three counties served by the SFRTA to provide no less than $2.67 million annually, dedicated by each governing body by October 1 of each year, which funds may be used for capital, operations, and maintenance.[20] Additionally, current law requires each county to annually fund SFRTA operations in an amount no less than $1.565 million.[21] The SFRTA is currently responsible for dispatching, maintenance, and inspection of the South Florida Rail Corridor.[22] Having assumed such responsibility, the FDOT is statutorily required to *annually* transfer to the SFRTA a total of $42.1 million as follows:

- $15 million for SFRTA operations, maintenance, and dispatch; and
- $27.1 million for operating assistance, corridor track maintenance, and contract maintenance for the SFRTA.[23]

In addition to these statutory amounts, the FDOT has agreed to cover 100 percent of annual maintenance costs up to $14.4 million, with shared costs in excess of that amount, pursuant to an Operating Agreement between the FDOT and the SFRTA setting out agreed-upon percentages.[24] The SFRTA's 2016 Comprehensive Annual Financial Report indicates that of the $102.2 million in total revenue for 2016, the FDOT contributed $55.3 million or 54 percent.[25]

The FDOT's Oversight Role

The SFRTA may not commit any funds provided by the FDOT without the FDOT's approval. The FDOT may not unreasonably withhold approval. At least 90 days before advertising any procurement or renewing any existing contract using state funds for payment, the SFRTA must

[20] Section 348.58(1), F.S.
[21] Section 348.58(3), F.S.
[22] *Transportation Authority Monitoring and Oversight Fiscal Year 2015 Report*, pp. 197-199, available at: http://www.ftc.state.fl.us/documents/reports/TAMO/FY2015Report.pdf. (Last visited March 2, 2017.)
[23] Section 348.58(4)(a)1., F.S.
[24] *Supra* note 22, p. 197.
[25] At p. 25, available at: http://www.sfrta.fl.gov/docs/overview/Fiscal-Year-2016_Comprehensive-Annual-Financial-Report-FINAL.pdf. (Last visited March 2, 2017.)

notify the FDOT of the proposed procurement or renewal and the proposed terms. If the FDOT objects in writing within 60 days of receipt of the notice, the SFRTA may not proceed. Failure of the FDOT to object within 60 days is deemed consent.[26] To enable the FDOT's evaluation of the SFRTA's proposed uses of state funds, the SFRTA must annually provide the FDOT with its proposed budget and with any additional documentation or information required by the FDOT.[27]

The Florida Single Audit Act/Agreements Funded with Federal or State Assistance

Section 215.97, F.S., creates the Florida Single Audit Act. Among its stated purposes is to establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.

- "State financial assistance" is defined to mean state resources, not including federal financial assistance and state matching on federal programs, provided to a nonstate entity to carry out a state project, including the types of state resources stated in the rules of the Department of Financial Services established in consultation with all state awarding agencies. State financial assistance may be provided directly by state awarding agencies or indirectly by nonstate entities. The term does not include procurement contracts used to buy goods or services from vendors and contracts to operate state-owned and contractor-operated facility.
- "Nonstate entity" means a local government entity, higher education entity, nonprofit organization, or for-profit organization that receives state financial assistance.

Section 215.971, F.S., requires an agreement that provides state financial assistant to a recipient or subrecipient to include all of the following:

- A scope of work that clearly establishes the tasks to be performed;
- A division of the agreement into deliverables that must be received and accepted in writing by the agency before payment. Deliverables must be directly related to the scope of work. The agreement must specify the required minimum level of service to be performed and criteria for evaluating completion of each deliverable;
- Specification of the financial consequences for failure to perform the minimum level of service.
- Specification that a recipient may expend funds only for allowable costs, and that any balance of unobligated funds and any funds paid in excess of the amount to which the recipient is entitled must be refunded to the state agency; and
- Any additional information required by the Florida Single Audit Act.

In 2016, the FDOT's Inspector General engaged in an effort "to determine the nature and extent of SFRTA's expenditures and whether their financial records were in compliance with applicable laws, rules, and regulations."[28] Based on the SFRTA's response, the Inspector General requested a determination from the Department of Financial Services whether appropriations to the SFRTA constitute "state financial assistance."[29] The Inspector General's report found:

[26] Section 348.58(4)(c)1., F.S.
[27] Section 348.58(4)(c)2., F.S.
[28] *See Audit Report No. 141-4002*, available at: http://www.fdot.gov/ig/Reports/14I-4002%20Final.pdf. (Last visited March 18, 2017.)
[29] *Audit Report* at 7.

> SFRTA, as determined by the Department of Financial Services (DFS), is a Special District and a nonstate entity that is a recipient of state financial assistance.[30] We determined the Operating Agreement[31] between SFRTA and the department does not fully comply with mandatory provisions required by Section 215.971, F.S. nor does it contain the procurement provisions outlined in Chapter 287, F.S. We also determined $153 million of state appropriations was omitted from audit coverage in accordance with the Florida Single Audit Act for fiscal years 2010/11 to 2014/15. Additionally, SFRTA did not provide a standard operating budget-to-actual expenditure report based upon the use of each grant or funding source.[32]

The Inspector General recommended:

- The FDOT and the SFRTA should execute a revised agreement containing the mandatory provisions per s. 297.971, F.S.;
- The SFRTA should reissue Florida Single Audit reports for fiscal years 2010-1 to 2014-15 to provide audit coverage of the $153 million in state financial assistance previously omitted; and
- The SFRTA should provide monthly budget-to-actual expenditure reports, by each grant or other funding source, for both its operating fund and capital funds.[33]

III. Effect of Proposed Changes:

Section 1 creates s. 343.545, F.S., to provide definitions and authorizing the SFRTA to indemnify FECR and AAF for any loss, injury or damage to SFRTA's commuter rail passengers and rail corridor invitees, regardless of cause, including fault, failure, negligence, misconduct, nonfeasance, or misfeasance of FECR or AFF, subject to certain parameters. The bill authorizes the SFRTA to purchase certain railroad liability insurance and limits the SFRTA's obligation to indemnify to the insurance coverage amount. The bill also authorizes the FDOT to assume the SFRTA's obligations to indemnify and insure any freight rail service, intercity passenger rail service, and commuter rail service on an FDOT-owned rail corridor

Definitions

The bill provides various definitions relating to the act:

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[30] The DFS determined the SFRTA had for nine years submitted financial audit reports per s. 28.39, F.S., as a special district; that a special district as defined by statute is a unit of government created for a special purpose by a special act with jurisdiction to operate within a limited geographic boundary; that the SFRTA was created by the South Florida Regional Transportation Authority Act for the special purpose of operating and managing a transit system in Broward, Miami-Dade and Palm Beach Counties; and that the law limits operations to those counties. The DFS also noted the SFRTA is a state project (a state program that provides state financial assistance to a nonstate organization) that must be assigned a Catalog of State Financial Assistance number and, finally, since state law created the SFRTA to carry out a state project, the SFRTA is a recipient of state financial assistance. *Audit Report,* Appendix J.

[31] The report notes a June 2013 operating agreement between the FDOT and the SFRTA for continuing SFRC operating rights for a 14-year period that included SFRTA's agreement to conduct all activities in accordance with applicable federal and state laws and regulations and the operating rules, policies, and procedures adopted pursuant to such laws and regulations. *Id.* at 5.

[32] *Audit Report* at 1.

[33] *Id.*

- "Rail corridor," means the portion of a linear contiguous strip of real property that is used for rail service and owned by FECR or owned or controlled by AAF. The term applies *only when* the [SFRTA] has, by contract, assumed the obligation to forever protect, defend, indemnify, and hold harmless FECR, AAF, or their successors [in accordance with the bill's provisions] and acquired an easement interest, a lease, a right to operate, or a right of access. The term includes structures essential to railroad operations, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, rail stations, any ancillary development, and any other facilities or equipment used for the purposes of construction, operation, or maintenance of a railroad that provides rail service.
- "SFRTA rail corridor invitee" means any rail corridor invitee who is SFRTA's commuter rail passenger or is otherwise present on the rail corridor at the request of, pursuant to a contract with, for the purpose of doing business with, or at the behest of SFRTA. The term does not include:
  - Patrons at any station, except those patrons who are also SFRTA's commuter rail passengers;
  - Any person present on the rail corridor who is a patron of the non-SFRTA commuter rail service or is meeting or assisting a person who is a patron of the non-SFRTA commuter rail service;
  - Commercial or residential tenants of the developments in and around the stations or their invitees; or
  - Any third parties performing work at a station or in the rail corridor, such as employees and invitees of "PI"[34] or related entities, utilities, and fiber optic companies or others, or invitees or employees of the department or any county or municipality.
- "AAF rail corridor invitee," means any rail corridor invitee who is an AAF intercity rail passenger or is otherwise present on the rail corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of AAF, including vendors or employees of vendors at the MiamiCentral[35] station or any other station that AAF may construct on the rail corridor. The term does not include:
  - Patrons at any station, except those patrons who are also AAF's intercity rail passengers;
  - Commercial or residential tenants of the developments in and around the stations of their invitees; or
  - Any third parties performing work at a station or in the rail corridor, such as employees and invites of PI or related entities, utilities, and fiber optic companies, or invitees or employees of the FDOT or any county or municipality.
- "FECR rail corridor invitee," means any rail corridor invitee who is present on the rail corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of FECR. The term does not include patrons at any station, nor the same commercial or residential tenants or third parties referenced in the "AAF rail corridor invitee" definition above.
- "Rail corridor invitee," means any person who is on or about the rail corridor in which the AAF, SFRTA, or the non-SFRTA commuter rail service operator has an easement interest, a lease, a right to operate, or a right of access, and who is:

[34] "PI" means FDG Flagler Station II, LLC, which has an easement on the rail corridor for nonrail uses.
[35] "MiamiCentral" means the primary All Aboard Florida station located in downtown Miami, which includes exclusive areas used by the [SFRTA] for commuter rail service.

  - Present at the behest of an AAF, an SFRTA, a FECR, or the non-SFRTA commuter rail service operator for any purpose;
  - Otherwise entitled to be on or about the rail corridor; or
  - Meeting, assisting, or in the company of any person described above.
- "Non-SFRTA commuter rail service," means AAF's operation, or an AAF third-party designee's operation, of trains in any commuter rail service on the rail corridor that is not SFRTA's commuter rail service. The term does not include:
  - Any service operated by the [SFRTA] between MiamiCentral station and any stations in Miami-Dade County, Broward County, Palm Beach County, or points north on the FECR rail corridor; and
  - SFRTA's commuter rail service on the South Florida Rail Corridor owned by the (FDOT].
- "Other train," means a train that is not SFRTA's train, FECR's train, AAF's train, a train of a non-SFRTA commuter rail service operator, or a train of any other operator of intercity rail passenger service and must be treated as a train of the entity that made the initial request for the train to operate on the rail corridor.
- "Limited covered accident," means:
  - A collision directly between the trains, locomotives, rail cars, or rail equipment of SFRTA and FECR only, where the collision is caused by or arising from the willful misconduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order; or
  - A collision directly between the trains, locomotives, rail cars, or rail equipment of SFRTA and AAF only, where the collision is caused by or arising from the willful misconduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order.

In a limited covered accident, AAF's or FECR's willful misconduct must be "adjudicated by a court until all appeals are exhausted." This requirement is not in the provisions of s. 341.302, F.S., related to FDOT's liability with respect to the SunRail project.

The bill also defines the following terms: All Aboard Florida or AAF, AAF intercity rail passenger, commuter rail passenger, commuter rail service, existing IRIS crossing, Florida East Coast Railway or FECR, freight rail service, intercity passenger rail service, joint infrastructure, non-SFRTA commuter rail service operator, passenger easement, SFRC, and South Florida Regional Transportation Authority or SFRTA.

Assumption of Indemnity and Insurance Obligations

The bill authorizes the SFRTA to indemnify and protect FECR and AAF[36] from any liability, cost, or expense, including without limitation SFRTA's commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether the loss, damage, destruction, injury, or death is caused by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of FECR or AAF. The contractual indemnification, however, is subject to the following:

- The SFRTA is solely responsible (pays 100 percent) for any loss, injury, or damage to SFRTA commuter rail passengers, invitees, or trespassers, other than passengers or invitees of the non-SFRTA commuter rail service, regardless of circumstances or cause, subject to the following:
- FECR or AAF, as applicable, and with respect to a limited covered accident, must defend and indemnify the SFRTA for the amount of the self-insurance retention account (discussed below).
- If only an SFRTA train is involved in an incident, including incidents with trespassers or at at-grade crossings, the SFRTA is solely responsible (pays 100 percent).
- If only an FECR train or only an AAF train is involved in an incident, including incidents with trespassers or at at-grade crossings, FECR or AAF, as applicable, is solely responsible (pays 100 percent), except for loss, injury, or damage to SFRTA's commuter rail passengers, employees, and invitees.
- In an incident involving any "other train" that is not an SFRTA train, the other train is treated as an SFRTA train solely for purposes of allocation of liability between the SFRTA and the FECR, or between the SFRTA and AAF, as applicable, who share equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both the SFRTA's train and the FECR's train, or both the SFRTA's train and AAF's train, as applicable. The allocation as between the SFRTA and the FECR, or between the SFRTA and AAF, as applicable, remains one-half each as to third parties outside the rail corridor. The involvement of any other train does not alter the sharing of equal responsibility as to third parties outside the rail corridor.
- If only an SFRTA train and an FECR train, or only an "other train" (that is by definition considered an SFRTA train) and an FECR train, are involved in an incident, the SFRTA is responsible (pays 100 percent) for its property, commuter rail passengers, employees, and invitees. The FECR is responsible for its property, employees, and invitees. The SFRTA and the FECR each share one-half responsibility as to joint infrastructure[37] and rail corridor invitees who are not SFRTA invitees or FECR invitees, including, but not limited to, trespassers or third parties outside the rail corridor.
- If only an SFRTA train and an AAF train, or only an "other train" (that is by definition considered an SFRTA train) and an AAF train, are involved in an incident, the SFRTA is responsible (pays 100 percent) for its property, commuter rail passengers, employees, and invitees. AAF is responsible for its property, intercity rail passengers, employees, and invitees. The SFRTA and AAF each share one-half responsibility as to joint infrastructure

[36] For as long as AAF and FECR or their successors agree to indemnify the SFRTA in accordance with the bill's provisions.
[37] Defined to mean any portion or segment of the rail corridor that does not contain tracks or infrastructure designated for the exclusive use of the SFRTA, AAF, or the FECR and portions of the MiamiCentral station used by both AAF and SFRTA, including, but not limited to, stairs, elevators, and escalators.

and non-SFRTA and non-AAF invitees, as well as to trespassers and third parties outside the rail corridor.

- If an FECR train, an SFRTA train, and an AAF train are involved in an incident, the SFRTA is responsible for its property, commuter rail passengers, employees, and invitees. AAF is responsible for its property, employees, intercity rail passengers, and invitees. The FECR is responsible for its property, employees, and invitees, and invitees. The SFRTA, the FECR, and AAF each share one-third responsibility as to joint infrastructure and rail corridor invitees who are not SFRTA invitees, AAF invitees, or FECR invitees, including trespassers or third parties outside the rail corridor.
- If an SFRTA train, an FECR train, and an AAF train are involved in an incident, the bill allocates one-third of any liability each to the SFRTA, the FECR, and AAF as to third parties outside the rail corridor.
- If an SFRTA train, an FECR train, and any other train; or if an SFRTA train, an AAF train and any other train, are involved in an incident, the bill allocates one-third of any liability each to the SFRTA, the FECR, and the other train; or to the SFRTA, AAF, and the other train, as applicable, as to third parties outside the rail corridor.

The bill provides that the SFRTA is not obligated to indemnify the FECR and AAF for any amount in excess of required insurance coverage, but the SFRTA remains responsible for the indemnity obligation up the insurance coverage limit. If non-SFRTA commuter rail service is provided by an entity under contract with AAF, the SFRTA may elect at its sole discretion to provide the same insurance coverage and indemnity to any non-SFRTA commuter rail service operator.

The bill authorizes the SFRTA to purchase railroad liability insurance of $295 million per occurrence, adjusted in accordance with applicable law,[38] with a $5 million self-insurance retention account, known as the "SFRTA insurance program." At the SFRTA's sole discretion, the insurance program may cover the obligations described in the bill or any other service operated by the SFRTA on a rail corridor. All definitions, terms, conditions, restrictions, exclusions, obligations, and duties included in any of the insurance policies procured by the SFRTA for the insurance program apply to the self-insurance retention account and its application to claims against the applicable insureds.

The SFRTA must name the FECR and AAF as insureds on any policies it procures at no cost to the FECR or AAF and ensure that all policies have a waiver of exclusion for punitive damages and coverage for claims made pursuant to the Federal Employers Liability Act.[39] Such policies must include coverage for terrorism and pollution, including, but not limited to, coverage applicable in the event of a railroad accident, a derailment, or an overturn, and evacuation expense.

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[38] *See* 49 U.S.C. s. 28103. In January of this year, the U.S.D.O.T. Secretary published its Notice of Adjustment to Rail Passenger Transportation Liability Cap under s. 11415 of the Fixing America's Surface Transportation Act, raising the transportation liability cap from $200 million to just under $295 million. *See* the notice at: https://www.gpo.gov/fdsys/pkg/FR-2016-01-11/pdf/2016-00301.pdf. (Last visited March 17, 2017.)

[39] 45 U.S.C. 51 *et seq*. This act protects and compensates railroad workers injured on the job, if the worker can prove that the railroad was at least partly legally negligent in causing the injury.

Section 6 amends s. 341.302(17), F.S., adding a new paragraph (d), to authorize the FDOT to assume the SFRTA's obligations to indemnify and insure freight rail service, intercity passenger rail service, and commuter rail service on an FDOT-owned rail corridor, whether ownership is in fee or by easement, or on a rail corridor where the FDOT has the right to operate. The FDOT notes that this authority would provide a financial advantage to SFRTA that is not offered to other authorities or transit operations.[40]

The SFRTA, the FDOT's Oversight Role, and State Funds Transfer

Section 4 amends s. 343.54, F.S., relating to the powers and duties of the SFRTA, to prohibit the SFRTA from entering into, extending, or renewing any contract or other agreement that may be funded with FDOT-provided funds without the prior review and written approval by the FDOT of the proposed expenditures.

Section 5 amends s. 343.58(4), F.S., deeming funds provided to the authority by the FDOT under that section to be state financial assistance provided to a nonstate entity to carry out a state project subject to the provisions of ss. 215.97 and 215.971, F.S. The FDOT is directed to provide the funds in accordance with the terms of a written agreement to be entered into between the SFRTA and the FDOT. The agreement must provide for FDOT review, approval, and audit of the SFRTA's expenditure of such funds and must include such other provisions as are required by applicable law. The FDOT is expressly authorized to advance the SFRTA one-fourth of the total funding provided under that section for a state fiscal year at the beginning of each state fiscal year. Thereafter, the bill requires monthly payments over the fiscal year on a reimbursement basis as supported by invoices and such additional documentation and information as the FDOT may reasonably require, and a reconciliation of the advance against remaining invoices in the last quarter of the fiscal year.

This section to remove the existing provisions relating to the FDOT's oversight role, except for requiring the SFRTA to annually provide the FDOT with its proposed budget and to *promptly* provide the FDOT with any additional documentation or information required by the FDOT for its evaluation of SFRTA-proposed uses of state funds.

Section 2 amends s. 343.52, F.S., to define "department" to mean the Department of Transportation.

Section 3 amends s. 343.53, F.S., revising a cross-reference to conform to changes made by the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[40] *See* the FDOT's analysis of SB 842. (On file in the Senate Transportation Committee.)

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 FECR and AAF would benefit as named insureds under the required insurance policy without contributing towards the cost of the insurance.

C. Government Sector Impact:

The FDOT and the SFRTA may experience administrative expenses associated with the FDOT's review, written approval, and audit of the SFRTA's proposed expenditures using any FDOT-provided funding.

The cost to SFRTA for the purchase of liability insurance and to establish a self-insurance retention fund for the purpose of paying the deductible limit established in the insurance policies is unknown at this time.

The bill expands the FDOT's authority to indemnify intercity passenger rail service and commuter rail service. The expansion overlaps, at least in part, the FDOT's existing authority to indemnify freight rail service in s. 341.302, F.S. To the extent that FDOT assumes the SFRTA's obligations to indemnify and insure freight rail service, intercity passenger rail service, and commuter rail service, there would be an indeterminate cost to the state for insurance premiums and any payments from the self-insurance retention fund.

VI. Technical Deficiencies:

The bill defines the terms, "existing IRIS crossing" and "passenger easement," but the terms are not used elsewhere in the bill.

For purposes of clarity, the conjunctive "or" on line 251 may need to be modified to reflect the relationship between subparagraphs in newly created s. 343.545(2)(a), F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 343.52, 343.53, 343.54, 343.58 and 341.302.

This bill creates the following sections of the Florida Statutes: 343.545.

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 removes the existing provisions relating to the FDOT's oversight role and prohibits the SFRTA from entering into, extending, or renewing any contract or other agreement that may be funded with FDOT-provided funds without the prior review and written approval by the FDOT of the proposed expenditures. Additionally, the CS:

- Deems funds provided to the SFRTA by the FDOT to be state financial assistance provided to a nonstate entity to carry out a state project subject to the provisions of ss. 215.97 and 215.971, F.S.;
- Directs the FDOT and the SFRTA to enter into a written agreement pursuant to which the FDOT will provide the required statutory funding and which must provide for FDOT review, approval, and audit of the SFRTA's expenditure of such funds;
- Authorizes the FDOT to advance the SFRTA one-fourth of the required statutory funding at the start of each fiscal year, with monthly payments over the fiscal year on a reimbursement basis supported by invoices, and a reconciliation in the last quarter of the fiscal year.

CS by Transportation on March 22, 2017:
The CS removes from the bill provision that the state funds transferred from the STTF to the SFRTA pursuant to s. 343.58, F.S., may not be considered state financial assistance subject to the Florida Single Audit Act, s. 215.97, F.S., or to the requirements for inclusion of specified provisions in agreements funded with federal or state assistance under s. 215.971, F.S.

B. Amendments:

None

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
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The Committee on Appropriations (Galvano) recommended the following:

Senate Amendment

Delete lines 94 - 220
and insert:
(f) "Florida East Coast Railway" or "FECR" means Florida East Coast Railway, LLC, or its successors and assigns.
(g) "FECR rail corridor invitee" means any rail corridor invitee who is present on the rail corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of FECR. The term does not

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include patrons at any station; commercial or residential tenants of the developments in and around the stations or their invitees; or any third parties performing work at a station or in the rail corridor, such as employees and invitees of PI or related entities, utilities, and fiber optic companies or others, or invitees or employees of the department or any county or municipality.

(h) "Freight rail service" means any and all uses and purposes that are ancillary or related to current and future freight rail operations on, along, over, under, and across the rail corridor, including operating trains, rail cars, business cars, locomotives, hi-rail vehicles, and other rail equipment for the movement of freight in overhead and local service; interchanging rail cars with other freight railroads; providing pickups, setoffs, transloading services, or storage in transit; and any and all other activities that are ancillary or related to the transportation of freight on or along the rail corridor.

(i) "Intercity passenger rail service" means all passenger service on the rail corridor other than commuter rail service and is characterized by trains making less frequent stops along the rail corridor than the commuter rail service makes.

(j) "Joint infrastructure" means any portion or segment of the rail corridor which does not contain tracks or infrastructure designated for the exclusive use of the authority, AAF, or FECR and portions of the MiamiCentral station used by both AAF and SFRTA, including, but not limited to, stairs, elevators, and escalators.

(k) "Limited covered accident" means:

1. A collision directly between the trains, locomotives,

rail cars, or rail equipment of SFRTA and FECR only, where the collision is caused by or arising from the willful misconduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order; or

2. A collision directly between the trains, locomotives, rail cars, or rail equipment of SFRTA and AAF only, if the collision is caused by or arising from the willful misconduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order.

(l) "MiamiCentral" means the primary All Aboard Florida station located in downtown Miami, which includes exclusive areas used by the authority for commuter rail service.

(m) "Non-SFRTA commuter rail service" means AAF's operation, or an AAF third-party designee's operation, of trains in any commuter rail service on the rail corridor which is not SFRTA's commuter rail service. The term does not include:

1. Any service operated by the authority between the MiamiCentral station and any stations in Miami-Dade County, Broward County, Palm Beach County, or points north on the FECR

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rail corridor; and

2. SFRTA's commuter rail service on the South Florida Rail Corridor owned by the department.

(n) "Non-SFRTA commuter rail service operator" means the operator of any non-SFRTA commuter rail service.

(o) "Other train" means a train that is not SFRTA's train, FECR's train, AAF's train, a train of a non-SFRTA commuter rail service operator, or a train of any other operator of intercity rail passenger service and must be treated as a train of the entity that made the initial request for the train to operate on the rail corridor.

(p) "PI" means FDG Flagler Station II, LLC, which has an easement on the rail corridor for nonrail uses.

(q) "Rail corridor" means the portion of a linear contiguous strip of real property which is used for rail service and owned by FECR or owned or controlled by AAF. The term applies only when the authority has, by contract, assumed the obligation to forever protect, defend, indemnify, and hold harmless FECR, AAF, or their successors, in accordance with subsection (2), and acquired an easement interest, a lease, a right to operate, or a right of access. The term includes structures essential to railroad operations, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, rail stations, any ancillary development, and any other facilities or equipment used for the purposes of construction, operation, or maintenance of a railroad that provides rail service.

(r) "Rail corridor invitee" means any person who is on or


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about the rail corridor in which the AAF, SFRTA, or non-SFRTA commuter rail service operator has an easement interest, a lease, a right to operate, or a right of access and who is:

1. Present at the behest of an AAF, an SFRTA, an FECR, or the non-SFRTA commuter rail service operator for any purpose;

2. Otherwise entitled to be on or about the rail corridor; or

3. Meeting, assisting, or in the company of a person described in subparagraph 1. or subparagraph 2.

(s) "SFRTA" means the South Florida Regional Transportation Authority.

(t) "SFRTA rail corridor invitee" means any rail corridor invitee who is SFRTA's commuter rail passenger or is otherwise present on the rail corridor at the request of, pursuant to a contract with, for the purpose of doing business with, or at the behest of SFRTA. The term does not include patrons at any station, except those patrons who are also SFRTA's commuter rail passengers; any person present on the rail corridor who is a patron of the non-SFRTA commuter rail service or is meeting or assisting a person who is a patron of the non-SFRTA commuter rail service; commercial or residential tenants of the developments in and around the stations or their invitees; or any third parties performing work at a station or in the rail corridor, such as employees and invitees of PI or related entities, utilities, and fiber optic companies or others or invitees or employees of the department or any county or municipality.

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576-03800-17

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 the South Florida Regional Transportation Authority; creating s. 343.545, F.S.; defining terms; authorizing the South Florida Regional Transportation Authority, in conjunction with the operation of a certain commuter rail service, to have the power to assume specified indemnification and insurance obligations, subject to certain requirements; amending s. 343.52, F.S.; defining the term "department"; amending s. 343.53, F.S.; conforming a cross-reference; amending s. 343.54, F.S.; prohibiting the South Florida Regional Transportation Authority from entering into, extending, or renewing certain contracts or agreements without the Department of Transportation's approval of the authority's expenditures; amending s. 343.58, F.S.; providing that certain funds constitute state financial assistance for specified purposes; requiring that certain funds be paid pursuant to a written agreement between the department and the authority; providing certain required terms for the written agreement between the department and the authority; authorizing the department to advance the authority certain funding, subject to certain requirements; requiring the authority to promptly provide the department with any additional documentation or

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information required by the department for its evaluation of the proposed uses of certain state funds; amending s. 341.302, F.S.; authorizing the department to agree to assume certain indemnification and insurance obligations under certain circumstances; providing an effective date.

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

Section 1. Section 343.545, Florida Statutes, is created to read:

343.545 Power to assume indemnification and insurance obligations; definitions.—

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

(a) "All Aboard Florida" or "AAF" means All Aboard Florida Operations, LLC, or its successors and assigns.

(b) "AAF intercity rail passenger" means any person, ticketed or unticketed, using the AAF intercity passenger rail service on the rail corridor:

1. On board trains, locomotives, rail cars, or rail equipment employed in AAF intercity passenger rail service or entraining thereon and detraining therefrom;

2. On or about the rail corridor for any purpose related to the AAF intercity passenger rail service, including parking or purchasing tickets therefor and coming to, waiting for, and leaving from locomotives, rail cars, or rail equipment; or

3. Meeting, assisting, or in the company of any person described in subparagraph 1. or subparagraph 2.

(c) "AAF rail corridor invitee" means any rail corridor

invitee who is an AAF intercity rail passenger or is otherwise present on the rail corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of AAF, including persons who are vendors or employees of vendors at the MiamiCentral station or any other station that AAF may construct on the rail corridor. The term does not include patrons at any station, except those patrons who are also AAF's intercity rail passengers; commercial or residential tenants of the developments in and around the stations or their invitees; or any third parties performing work at a station or in the rail corridor, such as employees and invitees of PI or related entities, utilities, and fiber optic companies, or invitees or employees of the department or any county or municipality.

(d) "Commuter rail passenger" means any person, ticketed or unticketed, using the commuter rail service on the rail corridor:

1. On board trains, locomotives, rail cars, or rail equipment employed in commuter rail service or entraining thereon and detraining therefrom;

2. On or about the rail corridor for any purpose related to the commuter rail service, including parking or purchasing tickets therefor and coming to, waiting for, and leaving from locomotives, rail cars, or rail equipment; or

3. Meeting, assisting, or in the company of any person described in subparagraph 1. or subparagraph 2.

(e) "Commuter rail service" means the operation of the authority's trains transporting passengers and making frequent stops within urban areas and their immediate suburbs along the

rail corridor for the purpose of passengers entraining and detraining, and including the nonrevenue movement of trains for storage or maintenance. The term does not include the operation of trains by AAF transporting passengers in intercity passenger rail service between passenger rail stations established by AAF at Miami-Dade, Fort Lauderdale, West Palm Beach, or future stations, but shall include the provision of non-SFRTA commuter rail service by AAF or a third party designated by AAF, including SFRTA.

(f) "Existing IRIS crossing" means the existing, at-grade railroad crossing between the SFRC and the rail corridor located in Miami-Dade County.

(g) "Florida East Coast Railway" or "FECR" means Florida East Coast Railway, LLC, or its successors and assigns.

(h) "FECR rail corridor invitee" means any rail corridor invitee who is present on the rail corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of FECR. The term does not include patrons at any station; commercial or residential tenants of the developments in and around the stations or their invitees; or any third parties performing work at a station or in the rail corridor, such as employees and invitees of PI or related entities, utilities, and fiber optic companies or others, or invitees or employees of the department or any county or municipality.

(i) "Freight rail service" means any and all uses and purposes that are ancillary or related to current and future freight rail operations on, along, over, under, and across the rail corridor, including operating trains, rail cars, business

cars, locomotives, hi-rail vehicles, and other rail equipment for the movement of freight in overhead and local service; interchanging rail cars with other freight railroads; providing pickups, setoffs, transloading services, or storage in transit; and any and all other activities that are ancillary or related to the transportation of freight on or along the rail corridor.

(j) "Intercity passenger rail service" means all passenger service on the rail corridor other than commuter rail service and is characterized by trains making less frequent stops along the rail corridor than the commuter rail service does.

(k) "Joint infrastructure" means any portion or segment of the rail corridor which does not contain tracks or infrastructure designated for the exclusive use of the authority, AAF, or FECR and portions of the MiamiCentral station used by both AAF and SFRTA, including, but not limited to, stairs, elevators, and escalators.

(l) "Limited covered accident" means:

1. A collision directly between the trains, locomotives, rail cars, or rail equipment of SFRTA and FECR only, where the collision is caused by or arising from the willful misconduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order; or

2. A collision directly between the trains, locomotives, rail cars, or rail equipment of SFRTA and AAF only, if the

collision is caused by or arising from the willful misconduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order.

(m) "MiamiCentral" means the primary All Aboard Florida station located in downtown Miami, which includes exclusive areas used by the authority for commuter rail service.

(n) "Non-SFRTA commuter rail service" means AAF's operation, or an AAF third-party designee's operation, of trains in any commuter rail service on the rail corridor which is not SFRTA's commuter rail service. The term does not include:

1. Any service operated by the authority between the MiamiCentral station and any stations in Miami-Dade County, Broward County, Palm Beach County, or points north on the FECR rail corridor; and

2. SFRTA's commuter rail service on the South Florida Rail Corridor owned by the department.

(o) "Non-SFRTA commuter rail service operator" means the operator of any non-SFRTA commuter rail service.

(p) "Other train" means a train that is not SFRTA's train, FECR's train, AAF's train, a train of a non-SFRTA commuter rail service operator, or a train of any other operator of intercity rail passenger service and must be treated as a train of the entity that made the initial request for the train to operate on the rail corridor.

(q) "Passenger easement" means a permanent, perpetual, and exclusive easement on, along, over, under, or across the rail corridor for commuter rail service.

(r) "PI" means FDG Flagler Station II, LLC, which has an easement on the rail corridor for nonrail uses.

(s) "Rail corridor" means the portion of a linear contiguous strip of real property which is used for rail service and owned by FECR or owned or controlled by AAF. The term applies only when the authority has, by contract, assumed the obligation to forever protect, defend, indemnify, and hold harmless FECR, AAF, or their successors, in accordance with subsection (2), and acquired an easement interest, a lease, a right to operate, or a right of access. The term includes structures essential to railroad operations, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, rail stations, any ancillary development, and any other facilities or equipment used for the purposes of construction, operation, or maintenance of a railroad that provides rail service.

(t) "Rail corridor invitee" means any person who is on or about the rail corridor in which the AAF, SFRTA, or the non-SFRTA commuter rail service operator has an easement interest, a lease, a right to operate, or a right of access, and who is:

1. Present at the behest of an AAF, an SFRTA, a FECR, or the non-SFRTA commuter rail service operator for any purpose;

2. Otherwise entitled to be on or about the rail corridor; or

3. Meeting, assisting, or in the company of a person

described in subparagraph 1. or subparagraph 2.

(u) "SFRC" means South Florida Rail Corridor.

(v) "South Florida Regional Transportation Authority" or "SFRTA" means the authority.

(w) "SFRTA rail corridor invitee" means any rail corridor invitee who is SFRTA's commuter rail passenger or is otherwise present on the rail corridor at the request of, pursuant to a contract with, for the purpose of doing business with, or at the behest of SFRTA. The term does not include patrons at any station, except those patrons who are also SFRTA's commuter rail passengers; any person present on the rail corridor who is a patron of the non-SFRTA commuter rail service or is meeting or assisting a person who is a patron of the non-SFRTA commuter rail service; commercial or residential tenants of the developments in and around the stations or their invitees; or any third parties performing work at a station or in the rail corridor, such as employees and invitees of PI or related entities, utilities, and fiber optic companies or others, or invitees or employees of the department or any county or municipality.

(2) The authority, in conjunction with the operation of a commuter rail service on a rail corridor, has the power to assume the following obligations:

(a) To indemnify AAF and FECR in accordance with the terms specified in this paragraph for so long as AAF and FECR or their successors in interest agree to indemnify the authority in accordance with the terms specified in this paragraph.

1. Except as specifically provided in this paragraph, the authority shall protect, defend, indemnify, and hold harmless

FECR, its officers, agents, employees, successors, and assigns from and against any liability, cost, and expense, including, but not limited to, SFRTA's commuter rail passengers and rail corridor invitees in, on, or about the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of FECR or its officers, agents, employees, successors, and assigns;

2. Except as specifically provided in this paragraph, the authority shall protect, defend, indemnify, and hold harmless AAF and its officers, agents, employees, successors, and assigns from and against any liability, cost, and expense, including, but not limited to, SFRTA commuter rail passengers and SFRTA rail corridor invitees in, on, or about the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of AAF or its officers, agents, employees, successors, and assigns; or

3. The assumption of liability by the authority may not in any instance exceed the following parameters of allocation of risk:

a. The authority shall be solely responsible for any loss, injury, or damage to SFRTA commuter rail passengers, or to SFRTA rail corridor invitees or trespassers, other than passengers or invitees of the non-SFRTA commuter rail service, regardless of

circumstances or cause, subject to the terms and provisions of this paragraph.

b. FECR shall, with respect to a limited covered accident, protect, defend, and indemnify SFRTA for the amount of the self-insurance retention account.

c. AAF shall, with respect to a limited covered accident, protect, defend, and indemnify SFRTA for the amount of the self-insurance retention account.

d. When only one train is involved in an incident, including incidents with trespassers or at at-grade crossings, the authority shall be solely responsible for any loss, injury, or damage if the train is an SFRTA train.

e. When an incident occurs with only FECR's train involved, including incidents with trespassers or at at-grade crossings, FECR shall be solely responsible for any loss, injury, or damage, except for SFRTA's commuter rail passengers, SFRTA employees, and SFRTA rail corridor invitees.

f. When an incident occurs with only AAF's train involved, including incidents with trespassers or at at-grade crossings, AAF shall be solely responsible for any loss, injury, or damage, except for SFRTA's commuter rail passengers, SFRTA employees, and SFRTA rail corridor invitees.

g. For the purposes of this paragraph:

(I) An "other train" shall be treated as the train of the entity that made the initial request for the train to operate on the rail corridor.

(II) In an incident involving any other train that is not an SFRTA train, the other train shall be treated as an SFRTA train solely for purposes of any allocation of liability

between:

(A) SFRTA and FECR. SFRTA and FECR shall share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both SFRTA's train and FECR's train and the allocation as between SFRTA and FECR, regardless of whether the other train is treated as an SFRTA train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(B) SFRTA and AAF. SFRTA and AAF shall share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both an SFRTA train and AAF's train and the allocation as between SFRTA and AAF, regardless of whether the other train is treated as an SFRTA train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

h. When more than one train is involved in an incident:

(I) If only an SFRTA train and a FECR train, or only an other train that is an SFRTA train by definition and a FECR train, are involved in an incident, SFRTA shall be responsible for its property, all SFRTA's commuter rail passengers, SFRTA

employees, and SFRTA rail corridor invitees. FECR shall be responsible for its property and all of its employees and FECR rail corridor invitees. SFRTA and FECR shall each share one-half responsibility as to the joint infrastructure and rail corridor invitees who are not SFRTA rail corridor invitees or FECR rail corridor invitees, including, but not limited to, trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(II) If only an SFRTA train and an AAF train, or only an other train that is by definition an SFRTA train and an AAF train, are involved in an incident, SFRTA shall be responsible for its property, all SFRTA's commuter rail passengers, SFRTA employees, and SFRTA rail corridor invitees. AAF shall be responsible for its property and all of its employees, AAF's intercity rail passengers, and AAF rail corridor invitees. SFRTA and AAF shall each share one-half responsibility as to the joint infrastructure and rail corridor invitees who are not SFRTA rail corridor invitees or AAF rail corridor invitees, including, but not limited to, trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(III) If a FECR train, an SFRTA train, and an AAF train are involved in an incident, SFRTA shall be responsible for its property, all SFRTA's commuter rail passengers, SFRTA employees, and SFRTA rail corridor invitees. AAF shall be responsible for its property and all of its employees, AAF's intercity rail passengers, and AAF rail corridor invitees. FECR shall be responsible for its property and all of its employees and FECR rail corridor invitees. SFRTA, FECR, and AAF shall each share

one-third responsibility as to the joint infrastructure and rail corridor invitees who are not SFRTA rail corridor invitees, AAF rail corridor invitees, or FECR rail corridor invitees, including, but not limited to, trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(IV) If an SFRTA train, a FECR train, and an AAF train are involved in an incident, the allocation of liability among SFRTA, FECR, and AAF shall be one-third each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(V) If an SFRTA train, a FECR train, and any other train are involved in an incident, the allocation of liability among SFRTA, FECR, and the other train shall be one-third each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(VI) If an SFRTA train, an AAF train, and any other train are involved in an incident, the allocation of liability among SFRTA, AAF, and the other train shall be one-third each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

i. Notwithstanding anything to the contrary set forth in this paragraph, SFRTA is not obligated to indemnify FECR and AAF for any amount in excess of the insurance coverage limit. Whether or not SFRTA maintains the insurance coverage required pursuant to paragraph (b) to cover the indemnification obligations of this paragraph, SFRTA shall remain responsible for the indemnification obligations set forth in this paragraph up to the insurance coverage limit.

j. If the non-SFRTA commuter rail service is provided by an entity under contract with AAF, SFRTA may elect, at its sole discretion, to provide the same insurance coverage and to indemnify and hold harmless any non-SFRTA commuter rail service operator to the same extent that it provides such insurance or indemnification to AAF pursuant to this section.

(b) To purchase railroad liability insurance of $295 million per occurrence, which amount shall be adjusted in accordance with applicable law up to the insurance coverage limit, with a $5 million self-insurance retention account that shall be composed of and defined as the "SFRTA insurance program." The SFRTA insurance program may, at SFRTA's sole discretion, cover the obligations described in this section or any other service operated by SFRTA on a rail corridor. Because the self-insurance retention account is a part of the SFRTA insurance program, all definitions, terms, conditions, restrictions, exclusions, obligations, and duties included in any and all of the policies of insurance procured by SFRTA for the SFRTA insurance program shall apply to the self-insurance retention account and its application to claims against the applicable insureds. SFRTA shall name FECR and AAF as insureds on any policies it procures pursuant to this section at no cost to AAF and FECR and ensure that all policies shall have a waiver of exclusion for punitive damages and coverage for claims made pursuant to the Federal Employers Liability Act, 45 U.S.C. s. 51 et seq. Such policies must also include terrorism coverage, pollution coverage, including, but not limited to, coverage applicable in the event of a railroad accident, a derailment, or an overturn, and evacuation expense coverage.

Section 2. Section 343.52, Florida Statutes, is reordered and amended to read:

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

(2)~~(1)~~ "Authority" means the South Florida Regional Transportation Authority.

(3)~~(2)~~ "Board" means the governing body of the authority.

(1)~~(3)~~ "Area served" means Miami-Dade, Broward, and Palm Beach Counties. However, this area may be expanded by mutual consent of the authority and the board of county commissioners of Monroe County. The authority may not expand into any additional counties without the department's prior written approval.

(4) "Department" means the Department of Transportation.

(8)~~(4)~~ "Transit system" means a system used for the transportation of people and goods by means of, without limitation, a street railway, an elevated railway having a fixed guideway, a commuter railroad, a subway, motor vehicles, or motor buses, and includes a complete system of tracks, stations, and rolling stock necessary to effectuate passenger service to or from the surrounding regional municipalities.

(7)~~(5)~~ "Transit facilities" means property, avenues of access, equipment, or buildings built and installed in Miami-Dade, Broward, and Palm Beach Counties which are required to support a transit system.

(6) "Member" means the individuals constituting the board.

(5)~~(7)~~ "Feeder transit services" means a transit system that transports passengers to or from stations within or across counties.

Section 3. Paragraph (d) of subsection (2) of section

343.53, Florida Statutes, is amended to read:

343.53 South Florida Regional Transportation Authority.—

(2) The governing board of the authority shall consist of 10 voting members, as follows:

(d) If the authority's service area is expanded pursuant to s. 343.54(6) ~~s. 343.54(5)~~, the county containing the new service area shall have two members appointed to the board as follows:

1. The county commission of the county shall elect a commissioner as that commission's representative on the board. The commissioner must be a member of the county commission when elected and for the full extent of his or her term.

2. The Governor shall appoint a citizen member to the board who is not a member of the county commission but who is a resident and a qualified elector of that county.

Section 4. Present subsections (4) and (5) of section 343.54, Florida Statutes, are renumbered as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

343.54 Powers and duties.—

(4) Notwithstanding any other provision of this part, the authority may not enter into, extend, or renew any contract or other agreement that may be funded, in whole or in part, with funds provided by the department without the prior review and written approval by the department of the authority's proposed expenditures.

Section 5. Paragraph (c) of subsection (4) of section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.—

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, until as provided in paragraph (d), the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2.

(c)1. Funds provided to the authority by the department under this subsection constitute state financial assistance provided to a nonstate entity to carry out a state project subject to the provisions of s. 215.97 and s. 215.971. The department shall provide the funds in accordance with the terms of a written agreement to be entered into between the authority and the department which shall provide for department review, approval and audit of authority expenditure of such funds, and shall include such other provisions as are required by applicable law. The department is specifically authorized to agree to advance the authority one-fourth of the total funding provided under this subsection for a state fiscal year at the beginning of each state fiscal year, with monthly payments over the fiscal year on a reimbursement basis as supported by invoices and such additional documentation and information as the department may reasonably require, and a reconciliation of the advance against remaining invoices in the last quarter of the fiscal year ~~may not be committed by the authority without the approval of the department, which may not be unreasonably withheld. At least 90 days before advertising any procurement or renewing any existing contract that will rely on state funds for payment, the authority shall notify the department of the proposed procurement or renewal and the proposed terms thereof.~~

~~If the department, within 60 days after receipt of notice, objects in writing to the proposed procurement or renewal, specifying its reasons for objection, the authority may not proceed with the proposed procurement or renewal. Failure of the department to object in writing within 60 days after notice shall be deemed consent. This requirement does not impair or cause the authority to cancel contracts that exist as of June 30, 2012~~.

2. To enable the department to evaluate the authority's proposed uses of state funds, the authority shall annually provide the department with its proposed budget for the following authority fiscal year and shall promptly provide the department with any additional documentation or information required by the department for its evaluation of the proposed uses of the state funds.

Section 6. Paragraph (d) is added to subsection (17) of section 341.302, Florida Statutes, to read:

341.302 Rail program; duties and responsibilities of the department.—The department, in conjunction with other governmental entities, including the rail enterprise and the private sector, shall develop and implement a rail program of statewide application designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system to assure its continued and increased availability to respond to statewide mobility needs. Within the resources provided pursuant to chapter 216, and as authorized under federal law, the department shall:

(17) In conjunction with the acquisition, ownership, construction, operation, maintenance, and management of a rail

corridor, have the authority to:

(d) Without altering any of the rights granted to the department under this section, agree to assume the obligations to indemnify and insure, pursuant to s. 343.545, freight rail service, intercity passenger rail service, and commuter rail service on a department-owned rail corridor, whether ownership is in fee or by easement, or on a rail corridor where the department has the right to operate.

Neither the assumption by contract to protect, defend, indemnify, and hold harmless; the purchase of insurance; nor the establishment of a self-insurance retention fund shall be deemed to be a waiver of any defense of sovereign immunity for torts nor deemed to increase the limits of the department's or the governmental entity's liability for torts as provided in s. 768.28. The requirements of s. 287.022(1) shall not apply to the purchase of any insurance under this subsection. The provisions of this subsection shall apply and inure fully as to any other governmental entity providing commuter rail service and constructing, operating, maintaining, or managing a rail corridor on publicly owned right-of-way under contract by the governmental entity with the department or a governmental entity designated by the department. Notwithstanding any law to the contrary, procurement for the construction, operation, maintenance, and management of any rail corridor described in this subsection, whether by the department, a governmental entity under contract with the department, or a governmental entity designated by the department, shall be pursuant to s. 287.057 and shall include, but not be limited to, criteria for

the consideration of qualifications, technical aspects of the proposal, and price. Further, any such contract for design-build shall be procured pursuant to the criteria in s. 337.11(7).

Section 7. 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 842
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Transportation Committee; and Senator Galvano
SUBJECT:	South Florida Regional Transportation Authority
DATE:	April 26, 2017 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 842 authorizes the South Florida Regional Transportation Authority (SFRTA) to enter into contractual indemnification agreements with All Aboard Florida (AAF) and Florida East Coast Railway (FECR) on a rail corridor owned by AAF or FECR and in which all three entities operate rail service. The bill authorizes the Florida Department of Transportation (FDOT or department) to assume the obligations to indemnify and insure under such contractual agreements any freight rail service, intercity passenger service, and commuter rail service on a department-owned rail corridor or on a rail corridor where the FDOT has the right to operate.

The bill also deems funds provided by the FDOT to the SFRTA to be state financial assistance subject to specified requirements. The bill requires the FDOT to provide funds to the SFRTA in accordance with a written agreement containing certain provisions and authorizes the FDOT to advance funds at the start of each fiscal year, with monthly payments from the State Transportation Trust Fund (STTF) to the SFRTA for maintenance and dispatch on the South Florida Rail Corridor (SFRC) over the fiscal year on a reimbursement basis.

An indeterminate, but insignificant, negative fiscal impact on state government and the SFRTA is expected. See Section V., "Fiscal Impact Statement," for details.

The bill takes effect July 1, 2017.

II. Present Situation:

Freight Rail, Commuter Rail, and Intercity Passenger Rail

In 1988, the FDOT and CSX Transportation, Inc., (CSX) entered into an agreement under which the department bought approximately 81 miles of CSX track and right-of-way in order to operate commuter rail in South Florida. In 2003, the Legislature created the SFRTA, an agency of the state, as the successor to the Tri-County Commuter Rail Authority with all of its rights, privileges, and obligations.[1] The SFRTA is authorized to coordinate, develop, and operate a regional transportation system in the tri-county area of Broward, Miami-Dade, and Palm Beach Counties,[2] providing commuter rail service (Tri-Rail) for residents and visitors in the area served. The FDOT continues ownership of the SFRC, which runs parallel to I-95, extending south to Miami International Airport and north into Palm Beach County.

Florida East Coast Railway (FECR) owns[3] an existing rail corridor between Miami and Cocoa on which it operates freight rail service.[4] All Aboard Florida (AAF)[5], a subsidiary of the parent holding company of FECR, is currently developing an intercity express train service, called "Brightline," using the existing FECR corridor between Miami and Cocoa. AAF will build new track along State Road 528 between Cocoa and Orlando. Service between Miami and West Palm Beach is expected to be launched this year, with service from Miami to Orlando following.[6]

The SFRTA is planning to expand Tri-Rail service using the existing FECR corridor. Known as the "Tri-Rail Coastal Link," the project would reintroduce commuter service for passengers along an 85-mile stretch of the FECR corridor between downtown Miami and Jupiter, connecting 28 densely populated cities in east Miami-Dade, Broward, and Palm Beach Counties.[7] SFRTA's service on this link would share tracks with FECR's freight trains and AAF's Brightline, providing intercity passenger service. The SFRTA will have co-located stations with Brightline in Miami, Ft. Lauderdale, and West Palm Beach. AAF construction projects for the stations are at various stages.[8] AAF is reportedly unwilling to proceed with completion of Tri-Rail's portion of the Miami Central Station in part due to the absence of a contractual agreement to indemnify and insure FECR and AAF.[9]

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[1] Chapter 2003-159, L.O.F.
[2] Section 343.54, F.S.
[3] Florida East Coast Industries (FECI) is the holding company for FECR. Fortress Investment Group acquired FECI in 2007.
[4] *See* the FECR website available at: http://www.fecrwy.com/about. (Last visited March 17, 2017.)
[5] AAF is a wholly owned subsidiary of FECI. *See* the AAF website available at: http://www.allaboardflorida.com/. (Last visited March 17, 2017.)
[6] *See* the AAF website available at: http://www.allaboardflorida.com/. (Last visited March 17, 2017.)
[7] *See* the FDOT website available at: http://tri-railcoastallinkstudy.com/. (Last visited March 17, 2017.)
[8] *Supra* note 6.
[9] *See Legislative inaction, indemnification ruling impact Miami=Orlando rail service future*, May 28, 2016, available at: http://flarecord.com/stories/510745198-legislative-inaction-indemnification-ruling-impact-miami-orlando-rail-service-future. (Last visited March 17, 2017.)

Liability on Rail Corridors

Commuter rail operators often seek to use existing track or right-of-way, which is primarily owned by freight rail operators, because of the expense of building new rail infrastructure.[10] Consequently, commuter rail operators must enter into agreements with the freight rail operators regarding how they will access the right-of-way. The most common challenge that occurs during negotiations between the commuter rail operator and the freight rail operator is determining liability.[11]

The introduction of commuter trains on rail corridors that were previously used exclusively for freight operations inherently raises the freight operators' risk of liability due to the increased number of persons and trains present within the corridor. Accordingly, most freight rail operators want the commuter rail operator to assume all risks associated with the presence of the commuter rail service. Freight rail operators refer to this as the "but for" argument – "but for the presence of the commuter rail service, the freight railroad would not be exposed to certain risks; therefore, the freight railroads should be held harmless."[12] Recognizing the exposure of liability for both parties, Congress passed the Amtrak Reform and Accountability Act of 1997, which limited the aggregate overall damage liability to all passengers from a single accident to $200 million.[13]

When Congress created Amtrak in 1970,[14] Amtrak contracted with freight railroads to operate passenger rail service within freight corridors. These agreements were predicated on a no-fault allocation of liability. For example, a typical agreement indemnified the freight operators for "any injury, death or property damage to any Amtrak employees, Amtrak property or Amtrak passengers," and the freight operators would also indemnify and hold harmless Amtrak for "any injury, death or property damage" to freight employees and property.[15] According to one report, despite this language, some courts have held that the provisions do not apply in cases of gross negligence.[16]

Florida Rail Liability Provisions

In 2007, the FDOT entered into an agreement with CSX Transportation, Inc., (CSX) to purchase 61.5 miles of track or right-of-way in Central Florida to provide commuter rail service, contingent on passage of legislation containing certain indemnification provisions. Known as SunRail, the first phase of the project opened in 2014, connecting DeBary in Volusia County to

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[10] U.S. General Accounting Office, *Commuter Rail: Information and Guidance Could Help Facilitate Commuter and Freight Rail Access Negotiations*, Report GAO-04-240, 5 (Jan. 2004), *available at* http://www.gao.gov/assets/250/240916.html. (Last visited March 17, 2017).
[11] *Id.* at 17.
[12] *Id.* at 18.
[13] *Id*.
[14] Congress passed the Rail Passenger Service Act of 1970, creating Amtrak to take over passenger rail service and relieving freight railroads of the responsibility of providing passenger service. U.S. General Accounting Office, *supra* note 10, at 8.
[15] *See* the Transportation and Economic Development Appropriations staff analysis of HB 1-B, Engrossed 1, at 4., available at: http://archive.flsenate.gov/data/session/2009B/Senate/bills/analysis/pdf/2009h0001B.ta.pdf. (Last visited March 17, 2017.)
[16] Center for Transportation Research, The University of Texas at Austin, *Passenger Rail Sharing Freight Infrastructure: Creating Win-Win Agreements*, Project Summary Report 0-5022-S, 3 (March 2006), available at: http://ctr.utexas.edu/wp-content/uploads/pubs/0_5022_S.pdf. (Last visited March 17, 2017.)

Sand Lake Road in Orange County and featuring 12 Central Florida stations.[17] Today, the FDOT operates the SunRail system, and CSX continues to operate freight trains in the corridor.

In 2009,[18] the Legislature authorized the FDOT in s. 341.302, F.S., to contractually indemnify a freight rail operator and the National Railroad Passenger Corporation (Amtrak) for any loss, injury, or damage to commuter rail passengers or rail corridor invitees, regardless of circumstances or cause, including negligence, misconduct, nonfeasance, or misfeasance. The contractual indemnification, however, is subject to the following parameters and exceptions:[19]

- If only a freight train is involved in an incident, the freight rail operator is solely responsible (pays 100 percent) for any loss, injury, or damage to its property and people, as well as for losses related to incidents involving trespassers and grade crossings. The department pays for loss, injury, or damage to any commuter rail passengers or invitees.
- If only an FDOT train (or "other train," as explained below) is involved in an incident, FDOT is solely responsible (pays 100 percent) for any loss, injury, or damage to its property and people, as well as for losses related to commuter rail passengers, rail corridor invitees, trespassers, and grade crossings.
    - Any train that is neither FDOT's train nor the freight rail operator's train is considered an "other train." An "other train" is treated as an FDOT train solely for purposes of allocation of liability between DOT and the freight rail operator, as long as FDOT and the freight rail operator share responsibility equally as to third parties injured outside the rail corridor.
- If both a freight train and an FDOT train, or a freight train and an "other train," are involved in an accident, the freight rail operator is solely responsible (pays 100 percent) for its property and all of its people. The freight rail operator and FDOT share responsibility one-half each (each pays 50 percent) for any third-party damage resulting outside the corridor or for damage relating to trespassers. The department is solely responsible (pays 100 percent) for its property and all of its people, including commuter rail passengers and invitees, except in certain cases involving willful misconduct or resulting in the award of punitive or exemplary damages, as explained below.
    - When there is a collision between an FDOT train and a freight train only and the freight rail operator's conduct amounts to willful misconduct or results in the award of punitive or exemplary damages, FDOT pays amounts in excess of its insurance deductible or self-insurance fund only if the freight rail operator pays for the amount of the insurance deductible or self-insurance fund (which is capped at $10 million).
- If an FDOT train, a freight train, and any "other train" are involved in an incident, the allocation of liability remains one-half each between FDOT and the freight rail operator for any loss, injury, or damage to third parties outside the rail corridor. If the "other train" makes any payment to third parties injured outside the corridor, the allocation of credit shall not reduce the freight rail operator's allocation to less than one-third of the total third-party liability.

[17] *See* the SunRail website available at: http://corporate.sunrail.com/stations-trains/phase-1-stations/ (last visited February 14, 2017).
[18] Chapter 2009-271, L.O.F.
[19] *See* s. 341.302(17), F.S., relating to the FDOT's grants of authority with respect to the acquisition, ownership, construction, operation, maintenance, and management of a rail corridor.

Additionally, in a freight-train-only accident, the freight rail operator is solely responsible for all damages relating to incidents with trespassers or at grade crossings. In an FDOT-train-only accident, the department is solely responsible for all damages relating to incidents with trespassers or at grade crossings. In an incident involving an FDOT train (or an "other train") and a freight train, the department and the freight rail operator share responsibility one-half each as to damages to trespassers and third parties outside the rail corridor; however, the statute does not address liability for damages relating to incidents at grade crossings.

The department's duty to indemnify a freight rail operator is capped at $200 million. The department is required to purchase up to $200 million in liability insurance and establish a self-insurance retention fund to cover any deductible, provided that any parties covered under the insurance must pay a reasonable monetary contribution to cover the cost of the insurance. The self-insurance fund or deductible shall not exceed $10 million. The insurance and self-insurance retention fund may provide coverage for all damages, including punitive damages.

SFRTA Funding

Statutory provisions require each of the three counties served by the SFRTA to provide no less than $2.67 million annually, dedicated by each governing body by October 1 of each year, which funds may be used for capital, operations, and maintenance.[20] Additionally, current law requires each county to annually fund SFRTA operations in an amount no less than $1.565 million.[21] The SFRTA is currently responsible for dispatching, maintenance, and inspection of the South Florida Rail Corridor.[22] Having assumed such responsibility, the FDOT is statutorily required to *annually* transfer to the SFRTA a total of $42.1 million as follows:

- $15 million for SFRTA operations, maintenance, and dispatch; and
- $27.1 million for operating assistance, corridor track maintenance, and contract maintenance for the SFRTA.[23]

In addition to these statutory amounts, the FDOT has agreed to cover 100 percent of annual maintenance costs up to $14.4 million, with shared costs in excess of that amount, pursuant to an Operating Agreement between the FDOT and the SFRTA setting out agreed-upon percentages.[24] The SFRTA's 2016 Comprehensive Annual Financial Report indicates that of the $102.2 million in total revenue for 2016, the FDOT contributed $55.3 million or 54 percent.[25]

The FDOT's Oversight Role

The SFRTA may not commit any funds provided by the FDOT without the FDOT's approval. The FDOT may not unreasonably withhold approval. At least 90 days before advertising any procurement or renewing any existing contract using state funds for payment, the SFRTA must

[20] Section 348.58(1), F.S.
[21] Section 348.58(3), F.S.
[22] *Transportation Authority Monitoring and Oversight Fiscal Year 2015 Report*, pp. 197-199, available at: http://www.ftc.state.fl.us/documents/reports/TAMO/FY2015Report.pdf. (Last visited March 2, 2017.)
[23] Section 348.58(4)(a)1., F.S.
[24] *Supra* note 22, p. 197.
[25] At p. 25, available at: http://www.sfrta.fl.gov/docs/overview/Fiscal-Year-2016_Comprehensive-Annual-Financial-Report-FINAL.pdf. (Last visited March 2, 2017.)

notify the FDOT of the proposed procurement or renewal and the proposed terms. If the FDOT objects in writing within 60 days of receipt of the notice, the SFRTA may not proceed. Failure of the FDOT to object within 60 days is deemed consent.[26] To enable the FDOT's evaluation of the SFRTA's proposed uses of state funds, the SFRTA must annually provide the FDOT with its proposed budget and with any additional documentation or information required by the FDOT.[27]

The Florida Single Audit Act/Agreements Funded with Federal or State Assistance

Section 215.97, F.S., creates the Florida Single Audit Act. Among its stated purposes is to establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.

- "State financial assistance" is defined to mean state resources, not including federal financial assistance and state matching on federal programs, provided to a nonstate entity to carry out a state project, including the types of state resources stated in the rules of the Department of Financial Services established in consultation with all state awarding agencies. State financial assistance may be provided directly by state awarding agencies or indirectly by nonstate entities. The term does not include procurement contracts used to buy goods or services from vendors and contracts to operate state-owned and contractor-operated facility.
- "Nonstate entity" means a local government entity, higher education entity, nonprofit organization, or for-profit organization that receives state financial assistance.

Section 215.971, F.S., requires an agreement that provides state financial assistant to a recipient or subrecipient to include all of the following:

- A scope of work that clearly establishes the tasks to be performed;
- A division of the agreement into deliverables that must be received and accepted in writing by the agency before payment. Deliverables must be directly related to the scope of work. The agreement must specify the required minimum level of service to be performed and criteria for evaluating completion of each deliverable;
- Specification of the financial consequences for failure to perform the minimum level of service.
- Specification that a recipient may expend funds only for allowable costs, and that any balance of unobligated funds and any funds paid in excess of the amount to which the recipient is entitled must be refunded to the state agency; and
- Any additional information required by the Florida Single Audit Act.

In 2016, the FDOT's Inspector General engaged in an effort "to determine the nature and extent of SFRTA's expenditures and whether their financial records were in compliance with applicable laws, rules, and regulations."[28] Based on the SFRTA's response, the Inspector General requested a determination from the Department of Financial Services whether appropriations to the SFRTA constitute "state financial assistance."[29] The Inspector General's report found:

[26] Section 348.58(4)(c)1., F.S.
[27] Section 348.58(4)(c)2., F.S.
[28] *See Audit Report No. 141-4002*, available at: http://www.fdot.gov/ig/Reports/14I-4002%20Final.pdf. (Last visited March 18, 2017.)
[29] *Audit Report* at 7.

> SFRTA, as determined by the Department of Financial Services (DFS), is a Special District and a nonstate entity that is a recipient of state financial assistance.[30] We determined the Operating Agreement[31] between SFRTA and the department does not fully comply with mandatory provisions required by Section 215.971, F.S. nor does it contain the procurement provisions outlined in Chapter 287, F.S. We also determined $153 million of state appropriations was omitted from audit coverage in accordance with the Florida Single Audit Act for fiscal years 2010/11 to 2014/15. Additionally, SFRTA did not provide a standard operating budget-to-actual expenditure report based upon the use of each grant or funding source.[32]

The Inspector General recommended:

- The FDOT and the SFRTA should execute a revised agreement containing the mandatory provisions per s. 297.971, F.S.;
- The SFRTA should reissue Florida Single Audit reports for fiscal years 2010-1 to 2014-15 to provide audit coverage of the $153 million in state financial assistance previously omitted; and
- The SFRTA should provide monthly budget-to-actual expenditure reports, by each grant or other funding source, for both its operating fund and capital funds.[33]

III. Effect of Proposed Changes:

Section 1 creates s. 343.545, F.S., to provide definitions and authorizing the SFRTA to indemnify FECR and AAF for any loss, injury or damage to SFRTA's commuter rail passengers and rail corridor invitees, regardless of cause, including fault, failure, negligence, misconduct, nonfeasance, or misfeasance of FECR or AFF, subject to certain parameters. The bill authorizes the SFRTA to purchase certain railroad liability insurance and limits the SFRTA's obligation to indemnify to the insurance coverage amount. The bill also authorizes the FDOT to assume the SFRTA's obligations to indemnify and insure any freight rail service, intercity passenger rail service, and commuter rail service on an FDOT-owned rail corridor

Definitions

The bill provides various definitions relating to the act:

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[30] The DFS determined the SFRTA had for nine years submitted financial audit reports per s. 28.39, F.S., as a special district; that a special district as defined by statute is a unit of government created for a special purpose by a special act with jurisdiction to operate within a limited geographic boundary; that the SFRTA was created by the South Florida Regional Transportation Authority Act for the special purpose of operating and managing a transit system in Broward, Miami-Dade and Palm Beach Counties; and that the law limits operations to those counties. The DFS also noted the SFRTA is a state project (a state program that provides state financial assistance to a nonstate organization) that must be assigned a Catalog of State Financial Assistance number and, finally, since state law created the SFRTA to carry out a state project, the SFRTA is a recipient of state financial assistance. *Audit Report,* Appendix J.

[31] The report notes a June 2013 operating agreement between the FDOT and the SFRTA for continuing SFRC operating rights for a 14-year period that included SFRTA's agreement to conduct all activities in accordance with applicable federal and state laws and regulations and the operating rules, policies, and procedures adopted pursuant to such laws and regulations. *Id.* at 5.

[32] *Audit Report* at 1.

[33] *Id.*

- "Rail corridor," means the portion of a linear contiguous strip of real property that is used for rail service and owned by FECR or owned or controlled by AAF. The term applies *only when* the [SFRTA] has, by contract, assumed the obligation to forever protect, defend, indemnify, and hold harmless FECR, AAF, or their successors [in accordance with the bill's provisions] and acquired an easement interest, a lease, a right to operate, or a right of access. The term includes structures essential to railroad operations, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, rail stations, any ancillary development, and any other facilities or equipment used for the purposes of construction, operation, or maintenance of a railroad that provides rail service.
- "SFRTA rail corridor invitee" means any rail corridor invitee who is SFRTA's commuter rail passenger or is otherwise present on the rail corridor at the request of, pursuant to a contract with, for the purpose of doing business with, or at the behest of SFRTA. The term does not include:
  - Patrons at any station, except those patrons who are also SFRTA's commuter rail passengers;
  - Any person present on the rail corridor who is a patron of the non-SFRTA commuter rail service or is meeting or assisting a person who is a patron of the non-SFRTA commuter rail service;
  - Commercial or residential tenants of the developments in and around the stations or their invitees; or
  - Any third parties performing work at a station or in the rail corridor, such as employees and invitees of "PI"[34] or related entities, utilities, and fiber optic companies or others, or invitees or employees of the department or any county or municipality.
- "AAF rail corridor invitee," means any rail corridor invitee who is an AAF intercity rail passenger or is otherwise present on the rail corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of AAF, including vendors or employees of vendors at the MiamiCentral[35] station or any other station that AAF may construct on the rail corridor. The term does not include:
  - Patrons at any station, except those patrons who are also AAF's intercity rail passengers;
  - Commercial or residential tenants of the developments in and around the stations of their invitees; or
  - Any third parties performing work at a station or in the rail corridor, such as employees and invites of PI or related entities, utilities, and fiber optic companies, or invitees or employees of the FDOT or any county or municipality.
- "FECR rail corridor invitee," means any rail corridor invitee who is present on the rail corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of FECR. The term does not include patrons at any station, nor the same commercial or residential tenants or third parties referenced in the "AAF rail corridor invitee" definition above.
- "Rail corridor invitee," means any person who is on or about the rail corridor in which the AAF, SFRTA, or the non-SFRTA commuter rail service operator has an easement interest, a lease, a right to operate, or a right of access, and who is:

[34] "PI" means FDG Flagler Station II, LLC, which has an easement on the rail corridor for nonrail uses.
[35] "MiamiCentral" means the primary All Aboard Florida station located in downtown Miami, which includes exclusive areas used by the [SFRTA] for commuter rail service.

  - Present at the behest of an AAF, an SFRTA, a FECR, or the non-SFRTA commuter rail service operator for any purpose;
  - Otherwise entitled to be on or about the rail corridor; or
  - Meeting, assisting, or in the company of any person described above.
- "Non-SFRTA commuter rail service," means AAF's operation, or an AAF third-party designee's operation, of trains in any commuter rail service on the rail corridor that is not SFRTA's commuter rail service. The term does not include:
  - Any service operated by the [SFRTA] between MiamiCentral station and any stations in Miami-Dade County, Broward County, Palm Beach County, or points north on the FECR rail corridor; and
  - SFRTA's commuter rail service on the South Florida Rail Corridor owned by the (FDOT].
- "Other train," means a train that is not SFRTA's train, FECR's train, AAF's train, a train of a non-SFRTA commuter rail service operator, or a train of any other operator of intercity rail passenger service and must be treated as a train of the entity that made the initial request for the train to operate on the rail corridor.
- "Limited covered accident," means:
  - A collision directly between the trains, locomotives, rail cars, or rail equipment of SFRTA and FECR only, where the collision is caused by or arising from the willful misconduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order; or
  - A collision directly between the trains, locomotives, rail cars, or rail equipment of SFRTA and AAF only, where the collision is caused by or arising from the willful misconduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order.

In a limited covered accident, AAF's or FECR's willful misconduct must be "adjudicated by a court until all appeals are exhausted." This requirement is not in the provisions of s. 341.302, F.S., related to FDOT's liability with respect to the SunRail project.

The bill also defines the following terms: All Aboard Florida or AAF, AAF intercity rail passenger, commuter rail passenger, commuter rail service, existing IRIS crossing, Florida East Coast Railway or FECR, freight rail service, intercity passenger rail service, joint infrastructure, non-SFRTA commuter rail service operator, passenger easement, SFRC, and South Florida Regional Transportation Authority or SFRTA.

Assumption of Indemnity and Insurance Obligations

The bill authorizes the SFRTA to indemnify and protect FECR and AAF[36] from any liability, cost, or expense, including without limitation SFRTA's commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether the loss, damage, destruction, injury, or death is caused by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of FECR or AAF. The contractual indemnification, however, is subject to the following:

- The SFRTA is solely responsible (pays 100 percent) for any loss, injury, or damage to SFRTA commuter rail passengers, invitees, or trespassers, other than passengers or invitees of the non-SFRTA commuter rail service, regardless of circumstances or cause, subject to the following:
- FECR or AAF, as applicable, and with respect to a limited covered accident, must defend and indemnify the SFRTA for the amount of the self-insurance retention account (discussed below).
- If only an SFRTA train is involved in an incident, including incidents with trespassers or at at-grade crossings, the SFRTA is solely responsible (pays 100 percent).
- If only an FECR train or only an AAF train is involved in an incident, including incidents with trespassers or at at-grade crossings, FECR or AAF, as applicable, is solely responsible (pays 100 percent), except for loss, injury, or damage to SFRTA's commuter rail passengers, employees, and invitees.
- In an incident involving any "other train" that is not an SFRTA train, the other train is treated as an SFRTA train solely for purposes of allocation of liability between the SFRTA and the FECR, or between the SFRTA and AAF, as applicable, who share equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both the SFRTA's train and the FECR's train, or both the SFRTA's train and AAF's train, as applicable. The allocation as between the SFRTA and the FECR, or between the SFRTA and AAF, as applicable, remains one-half each as to third parties outside the rail corridor. The involvement of any other train does not alter the sharing of equal responsibility as to third parties outside the rail corridor.
- If only an SFRTA train and an FECR train, or only an "other train" (that is by definition considered an SFRTA train) and an FECR train, are involved in an incident, the SFRTA is responsible (pays 100 percent) for its property, commuter rail passengers, employees, and invitees. The FECR is responsible for its property, employees, and invitees. The SFRTA and the FECR each share one-half responsibility as to joint infrastructure[37] and rail corridor invitees who are not SFRTA invitees or FECR invitees, including, but not limited to, trespassers or third parties outside the rail corridor.
- If only an SFRTA train and an AAF train, or only an "other train" (that is by definition considered an SFRTA train) and an AAF train, are involved in an incident, the SFRTA is responsible (pays 100 percent) for its property, commuter rail passengers, employees, and invitees. AAF is responsible for its property, intercity rail passengers, employees, and invitees. The SFRTA and AAF each share one-half responsibility as to joint infrastructure and non-SFRTA and non-AAF invitees, as well as to trespassers and third parties outside the rail corridor.

[36] For as long as AAF and FECR or their successors agree to indemnify the SFRTA in accordance with the bill's provisions.
[37] Defined to mean any portion or segment of the rail corridor that does not contain tracks or infrastructure designated for the exclusive use of the SFRTA, AAF, or the FECR and portions of the MiamiCentral station used by both AAF and SFRTA, including, but not limited to, stairs, elevators, and escalators.

- If an FECR train, an SFRTA train, and an AAF train are involved in an incident, the SFRTA is responsible for its property, commuter rail passengers, employees, and invitees. AAF is responsible for its property, employees, intercity rail passengers, and invitees. The FECR is responsible for its property, employees, and invitees, and invitees. The SFRTA, the FECR, and AAF each share one-third responsibility as to joint infrastructure and rail corridor invitees who are not SFRTA invitees, AAF invitees, or FECR invitees, including trespassers or third parties outside the rail corridor.
- If an SFRTA train, an FECR train, and an AAF train are involved in an incident, the bill allocates one-third of any liability each to the SFRTA, the FECR, and AAF as to third parties outside the rail corridor.
- If an SFRTA train, an FECR train, and any other train; or if an SFRTA train, an AAF train and any other train, are involved in an incident, the bill allocates one-third of any liability each to the SFRTA, the FECR, and the other train; or to the SFRTA, AAF, and the other train, as applicable, as to third parties outside the rail corridor.

The bill provides that the SFRTA is not obligated to indemnify the FECR and AAF for any amount in excess of required insurance coverage, but the SFRTA remains responsible for the indemnity obligation up the insurance coverage limit. If non-SFRTA commuter rail service is provided by an entity under contract with AAF, the SFRTA may elect at its sole discretion to provide the same insurance coverage and indemnity to any non-SFRTA commuter rail service operator.

The bill authorizes the SFRTA to purchase railroad liability insurance of $295 million per occurrence, adjusted in accordance with applicable law,[38] with a $5 million self-insurance retention account, known as the "SFRTA insurance program." At the SFRTA's sole discretion, the insurance program may cover the obligations described in the bill or any other service operated by the SFRTA on a rail corridor. All definitions, terms, conditions, restrictions, exclusions, obligations, and duties included in any of the insurance policies procured by the SFRTA for the insurance program apply to the self-insurance retention account and its application to claims against the applicable insureds.

The SFRTA must name the FECR and AAF as insureds on any policies it procures at no cost to the FECR or AAF and ensure that all policies have a waiver of exclusion for punitive damages and coverage for claims made pursuant to the Federal Employers Liability Act.[39] Such policies must include coverage for terrorism and pollution, including, but not limited to, coverage applicable in the event of a railroad accident, a derailment, or an overturn, and evacuation expense.

Section 6 amends s. 341.302(17), F.S., adding a new paragraph (d), to authorize the FDOT to assume the SFRTA's obligations to indemnify and insure freight rail service, intercity passenger rail service, and commuter rail service on an FDOT-owned rail corridor, whether ownership is in

[38] *See* 49 U.S.C. s. 28103. In January of this year, the U.S.D.O.T. Secretary published its Notice of Adjustment to Rail Passenger Transportation Liability Cap under s. 11415 of the Fixing America's Surface Transportation Act, raising the transportation liability cap from $200 million to just under $295 million. *See* the notice at: https://www.gpo.gov/fdsys/pkg/FR-2016-01-11/pdf/2016-00301.pdf. (Last visited March 17, 2017.)

[39] 45 U.S.C. 51 *et seq*. This act protects and compensates railroad workers injured on the job, if the worker can prove that the railroad was at least partly legally negligent in causing the injury.

fee or by easement, or on a rail corridor where the FDOT has the right to operate. The FDOT notes that this authority would provide a financial advantage to SFRTA that is not offered to other authorities or transit operations.[40]

The SFRTA, the FDOT's Oversight Role, and State Funds Transfer

Section 4 amends s. 343.54, F.S., relating to the powers and duties of the SFRTA, to prohibit the SFRTA from entering into, extending, or renewing any contract or other agreement that may be funded with FDOT-provided funds without the prior review and written approval by the FDOT of the proposed expenditures.

Section 5 amends s. 343.58(4), F.S., deeming funds provided to the authority by the FDOT under that section to be state financial assistance provided to a nonstate entity to carry out a state project subject to the provisions of ss. 215.97 and 215.971, F.S. The FDOT is directed to provide the funds in accordance with the terms of a written agreement to be entered into between the SFRTA and the FDOT. The agreement must provide for FDOT review, approval, and audit of the SFRTA's expenditure of such funds and must include such other provisions as are required by applicable law. The FDOT is expressly authorized to advance the SFRTA one-fourth of the total funding provided under that section for a state fiscal year at the beginning of each state fiscal year. Thereafter, the bill requires monthly payments over the fiscal year on a reimbursement basis as supported by invoices and such additional documentation and information as the FDOT may reasonably require, and a reconciliation of the advance against remaining invoices in the last quarter of the fiscal year.

This section to remove the existing provisions relating to the FDOT's oversight role, except for requiring the SFRTA to annually provide the FDOT with its proposed budget and to *promptly* provide the FDOT with any additional documentation or information required by the FDOT for its evaluation of SFRTA-proposed uses of state funds.

Section 2 amends s. 343.52, F.S., to define "department" to mean the Department of Transportation.

Section 3 amends s. 343.53, F.S., revising a cross-reference to conform to changes made by the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[40] *See* the FDOT's analysis of SB 842. (On file in the Senate Transportation Committee.)

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The FECR and AAF would benefit as named insureds under the required insurance policy without contributing towards the cost of the insurance.

C. Government Sector Impact:

The FDOT and the SFRTA may experience administrative expenses associated with the FDOT's review, written approval, and audit of the SFRTA's proposed expenditures using any FDOT-provided funding.

The cost to SFRTA for the purchase of liability insurance and to establish a self-insurance retention fund for the purpose of paying the deductible limit established in the insurance policies is unknown at this time.

The bill expands the FDOT's authority to indemnify intercity passenger rail service and commuter rail service. The expansion overlaps, at least in part, the FDOT's existing authority to indemnify freight rail service in s. 341.302, F.S. To the extent that FDOT assumes the SFRTA's obligations to indemnify and insure freight rail service, intercity passenger rail service, and commuter rail service, there would be an indeterminate cost to the state for insurance premiums and any payments from the self-insurance retention fund.

VI. Technical Deficiencies:

For purposes of clarity, the conjunctive "or" on line 244 may need to be modified to reflect the relationship between subparagraphs in newly created s. 343.545(2)(a), F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 343.52, 343.53, 343.54, 343.58, and 341.302.

This bill creates section 343.545 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 25, 2017:
The committee substitute removes the existing provisions relating to the FDOT's oversight role and prohibits the SFRTA from entering into, extending, or renewing any contract or other agreement that may be funded with FDOT-provided funds without the prior review and written approval by the FDOT of the proposed expenditures. Additionally, the CS:

- Deems funds provided to the SFRTA by the FDOT to be state financial assistance provided to a nonstate entity to carry out a state project subject to the provisions of ss. 215.97 and 215.971, F.S.;
- Directs the FDOT and the SFRTA to enter into a written agreement pursuant to which the FDOT will provide the required statutory funding and which must provide for FDOT review, approval, and audit of the SFRTA's expenditure of such funds;
- Authorizes the FDOT to advance the SFRTA one-fourth of the required statutory funding at the start of each fiscal year, with monthly payments over the fiscal year on a reimbursement basis supported by invoices, and a reconciliation in the last quarter of the fiscal year.
- Removes two definitions, "existing IRIS crossing" and "passenger easement," in the newly created s. 343.545, F.S., as the terms are not used elsewhere in the bill.

CS by Transportation on March 22, 2017:
The CS removes from the bill provision that the state funds transferred from the STTF to the SFRTA pursuant to s. 343.58, F.S., may not be considered state financial assistance subject to the Florida Single Audit Act, s. 215.97, F.S., or to the requirements for inclusion of specified provisions in agreements funded with federal or state assistance under s. 215.971, F.S.

B. Amendments:

None

By the Committee on Transportation; and Senator Galvano

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A bill to be entitled

An act relating to the South Florida Regional Transportation Authority; creating s. 343.545, F.S.; defining terms; authorizing the South Florida Regional Transportation Authority, in conjunction with the operation of a certain commuter rail service, to have the power to assume specified indemnification and insurance obligations, subject to certain requirements; amending s. 343.58, F.S.; requiring the Department of Transportation to transfer specified amounts annually from the State Transportation Trust Fund to the authority; requiring that the transfer be made through quarterly payments commencing at the start of each fiscal year; amending s. 341.302, F.S.; authorizing the department to agree to assume certain indemnification and insurance obligations under certain circumstances; providing an effective date.

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

Section 1. Section 343.545, Florida Statutes, is created to read:

343.545 Power to assume indemnification and insurance obligations; definitions.—

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

(a) "All Aboard Florida" or "AAF" means All Aboard Florida Operations, LLC, or its successors and assigns.

(b) "AAF intercity rail passenger" means any person, ticketed or unticketed, using the AAF intercity passenger rail

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service on the rail corridor:

1. On board trains, locomotives, rail cars, or rail equipment employed in AAF intercity passenger rail service or entraining thereon and detraining therefrom;

2. On or about the rail corridor for any purpose related to the AAF intercity passenger rail service, including parking or purchasing tickets therefor and coming to, waiting for, and leaving from locomotives, rail cars, or rail equipment; or

3. Meeting, assisting, or in the company of any person described in subparagraph 1. or subparagraph 2.

(c) "AAF rail corridor invitee" means any rail corridor invitee who is an AAF intercity rail passenger or is otherwise present on the rail corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of AAF, including persons who are vendors or employees of vendors at the MiamiCentral station or any other station that AAF may construct on the rail corridor. The term does not include patrons at any station, except those patrons who are also AAF's intercity rail passengers; commercial or residential tenants of the developments in and around the stations or their invitees; or any third parties performing work at a station or in the rail corridor, such as employees and invitees of PI or related entities, utilities, and fiber optic companies, or invitees or employees of the department or any county or municipality.

(d) "Commuter rail passenger" means any person, ticketed or unticketed, using the commuter rail service on the rail corridor:

1. On board trains, locomotives, rail cars, or rail

equipment employed in commuter rail service or entraining thereon and detraining therefrom;

2. On or about the rail corridor for any purpose related to the commuter rail service, including parking or purchasing tickets therefor and coming to, waiting for, and leaving from locomotives, rail cars, or rail equipment; or

3. Meeting, assisting, or in the company of any person described in subparagraph 1. or subparagraph 2.

(e) "Commuter rail service" means the operation of the authority's trains transporting passengers and making frequent stops within urban areas and their immediate suburbs along the rail corridor for the purpose of passengers entraining and detraining, and including the nonrevenue movement of trains for storage or maintenance. The term does not include the operation of trains by AAF transporting passengers in intercity passenger rail service between passenger rail stations established by AAF at Miami-Dade, Fort Lauderdale, West Palm Beach, or future stations, but shall include the provision of non-SFRTA commuter rail service by AAF or a third party designated by AAF, including SFRTA.

(f) "Existing IRIS crossing" means the existing, at-grade railroad crossing between the SFRC and the rail corridor located in Miami-Dade County.

(g) "Florida East Coast Railway" or "FECR" means Florida East Coast Railway, LLC, or its successors and assigns.

(h) "FECR rail corridor invitee" means any rail corridor invitee who is present on the rail corridor at the request of, pursuant to a contract with, or otherwise for the purpose of doing business with or at the behest of FECR. The term does not

include patrons at any station; commercial or residential tenants of the developments in and around the stations or their invitees; or any third parties performing work at a station or in the rail corridor, such as employees and invitees of PI or related entities, utilities, and fiber optic companies or others, or invitees or employees of the department or any county or municipality.

(i) "Freight rail service" means any and all uses and purposes that are ancillary or related to current and future freight rail operations on, along, over, under, and across the rail corridor, including operating trains, rail cars, business cars, locomotives, hi-rail vehicles, and other rail equipment for the movement of freight in overhead and local service; interchanging rail cars with other freight railroads; providing pickups, setoffs, transloading services, or storage in transit; and any and all other activities that are ancillary or related to the transportation of freight on or along the rail corridor.

(j) "Intercity passenger rail service" means all passenger service on the rail corridor other than commuter rail service and is characterized by trains making less frequent stops along the rail corridor than the commuter rail service does.

(k) "Joint infrastructure" means any portion or segment of the rail corridor which does not contain tracks or infrastructure designated for the exclusive use of the authority, AAF, or FECR and portions of the MiamiCentral station used by both AAF and SFRTA, including, but not limited to, stairs, elevators, and escalators.

(l) "Limited covered accident" means:

1. A collision directly between the trains, locomotives,

rail cars, or rail equipment of SFRTA and FECR only, where the collision is caused by or arising from the willful misconduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of FECR or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order; or

2. A collision directly between the trains, locomotives, rail cars, or rail equipment of SFRTA and AAF only, if the collision is caused by or arising from the willful misconduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order, or if punitive damages or exemplary damages are awarded due to the conduct of AAF or its subsidiaries, agents, licensees, employees, officers, or directors, as adjudicated pursuant to a final and unappealable court order.

(m) "MiamiCentral" means the primary All Aboard Florida station located in downtown Miami, which includes exclusive areas used by the authority for commuter rail service.

(n) "Non-SFRTA commuter rail service" means AAF's operation, or an AAF third-party designee's operation, of trains in any commuter rail service on the rail corridor which is not SFRTA's commuter rail service. The term does not include:

1. Any service operated by the authority between the MiamiCentral station and any stations in Miami-Dade County, Broward County, Palm Beach County, or points north on the FECR

rail corridor; and

2. SFRTA's commuter rail service on the South Florida Rail Corridor owned by the department.

(o) "Non-SFRTA commuter rail service operator" means the operator of any non-SFRTA commuter rail service.

(p) "Other train" means a train that is not SFRTA's train, FECR's train, AAF's train, a train of a non-SFRTA commuter rail service operator, or a train of any other operator of intercity rail passenger service and must be treated as a train of the entity that made the initial request for the train to operate on the rail corridor.

(q) "Passenger easement" means a permanent, perpetual, and exclusive easement on, along, over, under, or across the rail corridor for commuter rail service.

(r) "PI" means FDG Flagler Station II, LLC, which has an easement on the rail corridor for nonrail uses.

(s) "Rail corridor" means the portion of a linear contiguous strip of real property which is used for rail service and owned by FECR or owned or controlled by AAF. The term applies only when the authority has, by contract, assumed the obligation to forever protect, defend, indemnify, and hold harmless FECR, AAF, or their successors, in accordance with subsection (2), and acquired an easement interest, a lease, a right to operate, or a right of access. The term includes structures essential to railroad operations, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, rail stations, any ancillary development, and any other facilities or equipment

used for the purposes of construction, operation, or maintenance of a railroad that provides rail service.

(t) "Rail corridor invitee" means any person who is on or about the rail corridor in which the AAF, SFRTA, or the non-SFRTA commuter rail service operator has an easement interest, a lease, a right to operate, or a right of access, and who is:

1. Present at the behest of an AAF, an SFRTA, a FECR, or the non-SFRTA commuter rail service operator for any purpose;

2. Otherwise entitled to be on or about the rail corridor; or

3. Meeting, assisting, or in the company of a person described in subparagraph 1. or subparagraph 2.

(u) "SFRC" means South Florida Rail Corridor.

(v) "South Florida Regional Transportation Authority" or "SFRTA" means the authority.

(w) "SFRTA rail corridor invitee" means any rail corridor invitee who is SFRTA's commuter rail passenger or is otherwise present on the rail corridor at the request of, pursuant to a contract with, for the purpose of doing business with, or at the behest of SFRTA. The term does not include patrons at any station, except those patrons who are also SFRTA's commuter rail passengers; any person present on the rail corridor who is a patron of the non-SFRTA commuter rail service or is meeting or assisting a person who is a patron of the non-SFRTA commuter rail service; commercial or residential tenants of the developments in and around the stations or their invitees; or any third parties performing work at a station or in the rail corridor, such as employees and invitees of PI or related entities, utilities, and fiber optic companies or others, or

invitees or employees of the department or any county or municipality.

(2) The authority, in conjunction with the operation of a commuter rail service on a rail corridor, has the power to assume the following obligations:

(a) To indemnify AAF and FECR in accordance with the terms specified in this paragraph for so long as AAF and FECR or their successors in interest agree to indemnify the authority in accordance with the terms specified in this paragraph.

1. Except as specifically provided in this paragraph, the authority shall protect, defend, indemnify, and hold harmless FECR, its officers, agents, employees, successors, and assigns from and against any liability, cost, and expense, including, but not limited to, SFRTA's commuter rail passengers and rail corridor invitees in, on, or about the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of FECR or its officers, agents, employees, successors, and assigns;

2. Except as specifically provided in this paragraph, the authority shall protect, defend, indemnify, and hold harmless AAF and its officers, agents, employees, successors, and assigns from and against any liability, cost, and expense, including, but not limited to, SFRTA commuter rail passengers and SFRTA rail corridor invitees in, on, or about the rail corridor, regardless of whether the loss, damage, destruction, injury, or death giving rise to any such liability, cost, or expense is

caused in whole or in part, and to whatever nature or degree, by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of AAF or its officers, agents, employees, successors, and assigns; or

3. The assumption of liability by the authority may not in any instance exceed the following parameters of allocation of risk:

a. The authority shall be solely responsible for any loss, injury, or damage to SFRTA commuter rail passengers, or to SFRTA rail corridor invitees or trespassers, other than passengers or invitees of the non-SFRTA commuter rail service, regardless of circumstances or cause, subject to the terms and provisions of this paragraph.

b. FECR shall, with respect to a limited covered accident, protect, defend, and indemnify SFRTA for the amount of the self-insurance retention account.

c. AAF shall, with respect to a limited covered accident, protect, defend, and indemnify SFRTA for the amount of the self-insurance retention account.

d. When only one train is involved in an incident, including incidents with trespassers or at at-grade crossings, the authority shall be solely responsible for any loss, injury, or damage if the train is an SFRTA train.

e. When an incident occurs with only FECR's train involved, including incidents with trespassers or at at-grade crossings, FECR shall be solely responsible for any loss, injury, or damage, except for SFRTA's commuter rail passengers, SFRTA employees, and SFRTA rail corridor invitees.

f. When an incident occurs with only AAF's train involved,

including incidents with trespassers or at at-grade crossings, AAF shall be solely responsible for any loss, injury, or damage, except for SFRTA's commuter rail passengers, SFRTA employees, and SFRTA rail corridor invitees.

g. For the purposes of this paragraph:

(I) An "other train" shall be treated as the train of the entity that made the initial request for the train to operate on the rail corridor.

(II) In an incident involving any other train that is not an SFRTA train, the other train shall be treated as an SFRTA train solely for purposes of any allocation of liability between:

(A) SFRTA and FECR. SFRTA and FECR shall share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both SFRTA's train and FECR's train and the allocation as between SFRTA and FECR, regardless of whether the other train is treated as an SFRTA train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(B) SFRTA and AAF. SFRTA and AAF shall share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both an SFRTA train and AAF's train and the allocation as between SFRTA and AAF, regardless of whether the other train is

treated as an SFRTA train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

h. When more than one train is involved in an incident:

(I) If only an SFRTA train and a FECR train, or only an other train that is an SFRTA train by definition and a FECR train, are involved in an incident, SFRTA shall be responsible for its property, all SFRTA's commuter rail passengers, SFRTA employees, and SFRTA rail corridor invitees. FECR shall be responsible for its property and all of its employees and FECR rail corridor invitees. SFRTA and FECR shall each share one-half responsibility as to the joint infrastructure and rail corridor invitees who are not SFRTA rail corridor invitees or FECR rail corridor invitees, including, but not limited to, trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(II) If only an SFRTA train and an AAF train, or only an other train that is by definition an SFRTA train and an AAF train, are involved in an incident, SFRTA shall be responsible for its property, all SFRTA's commuter rail passengers, SFRTA employees, and SFRTA rail corridor invitees. AAF shall be responsible for its property and all of its employees, AAF's intercity rail passengers, and AAF rail corridor invitees. SFRTA and AAF shall each share one-half responsibility as to the joint infrastructure and rail corridor invitees who are not SFRTA rail corridor invitees or AAF rail corridor invitees, including, but

not limited to, trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(III) If a FECR train, an SFRTA train, and an AAF train are involved in an incident, SFRTA shall be responsible for its property, all SFRTA's commuter rail passengers, SFRTA employees, and SFRTA rail corridor invitees. AAF shall be responsible for its property and all of its employees, AAF's intercity rail passengers, and AAF rail corridor invitees. FECR shall be responsible for its property and all of its employees and FECR rail corridor invitees. SFRTA, FECR, and AAF shall each share one-third responsibility as to the joint infrastructure and rail corridor invitees who are not SFRTA rail corridor invitees, AAF rail corridor invitees, or FECR rail corridor invitees, including, but not limited to, trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(IV) If an SFRTA train, a FECR train, and an AAF train are involved in an incident, the allocation of liability among SFRTA, FECR, and AAF shall be one-third each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(V) If an SFRTA train, a FECR train, and any other train are involved in an incident, the allocation of liability among SFRTA, FECR, and the other train shall be one-third each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

(VI) If an SFRTA train, an AAF train, and any other train are involved in an incident, the allocation of liability among

SFRTA, AAF, and the other train shall be one-third each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

i. Notwithstanding anything to the contrary set forth in this paragraph, SFRTA is not obligated to indemnify FECR and AAF for any amount in excess of the insurance coverage limit. Whether or not SFRTA maintains the insurance coverage required pursuant to paragraph (b) to cover the indemnification obligations of this paragraph, SFRTA shall remain responsible for the indemnification obligations set forth in this paragraph up to the insurance coverage limit.

j. If the non-SFRTA commuter rail service is provided by an entity under contract with AAF, SFRTA may elect, at its sole discretion, to provide the same insurance coverage and to indemnify and hold harmless any non-SFRTA commuter rail service operator to the same extent that it provides such insurance or indemnification to AAF pursuant to this section.

(b) To purchase railroad liability insurance of $295 million per occurrence, which amount shall be adjusted in accordance with applicable law up to the insurance coverage limit, with a $5 million self-insurance retention account that shall be composed of and defined as the "SFRTA insurance program." The SFRTA insurance program may, at SFRTA's sole discretion, cover the obligations described in this section or any other service operated by SFRTA on a rail corridor. Because the self-insurance retention account is a part of the SFRTA insurance program, all definitions, terms, conditions, restrictions, exclusions, obligations, and duties included in any and all of the policies of insurance procured by SFRTA for

the SFRTA insurance program shall apply to the self-insurance retention account and its application to claims against the applicable insureds. SFRTA shall name FECR and AAF as insureds on any policies it procures pursuant to this section at no cost to AAF and FECR and ensure that all policies shall have a waiver of exclusion for punitive damages and coverage for claims made pursuant to the Federal Employers Liability Act, 45 U.S.C. s. 51 et seq. Such policies must also include terrorism coverage, pollution coverage, including, but not limited to, coverage applicable in the event of a railroad accident, a derailment, or an overturn, and evacuation expense coverage.

Section 2. Subsection (4) of section 343.58, Florida Statutes, is amended to read:

343.58 County funding for the South Florida Regional Transportation Authority.—

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, until as provided in paragraph (d), the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority, in quarterly payments commencing at the start of each fiscal year, the amounts specified in subparagraph (a)1. or subparagraph (a)2.

(a)1. If the authority becomes responsible for maintaining and dispatching the South Florida Rail Corridor:

a. $15 million from the State Transportation Trust Fund to the South Florida Regional Transportation Authority for operations, maintenance, and dispatch; and

b. An amount no less than the work program commitments equal to $27.1 million for fiscal year 2010-2011, as of July 1,

2009, for operating assistance to the authority and corridor track maintenance and contract maintenance for the South Florida Rail Corridor.

2. If the authority does not become responsible for maintaining and dispatching the South Florida Rail Corridor:

a. $13.3 million from the State Transportation Trust Fund to the South Florida Regional Transportation Authority for operations; and

b. An amount no less than the work program commitments equal to $17.3 million for fiscal year 2010-2011, as of July 1, 2009, for operating assistance to the authority.

(b) Funding required by this subsection may not be provided from the funds dedicated to the Florida Rail Enterprise pursuant to s. 201.15(4)(a)4.

(c)1. Funds provided to the authority by the department under this subsection may not be committed by the authority without the approval of the department, which may not be unreasonably withheld. At least 90 days before advertising any procurement or renewing any existing contract that will rely on state funds for payment, the authority shall notify the department of the proposed procurement or renewal and the proposed terms thereof. If the department, within 60 days after receipt of notice, objects in writing to the proposed procurement or renewal, specifying its reasons for objection, the authority may not proceed with the proposed procurement or renewal. Failure of the department to object in writing within 60 days after notice shall be deemed consent. This requirement does not impair or cause the authority to cancel contracts that exist as of June 30, 2012.

2. To enable the department to evaluate the authority's proposed uses of state funds, the authority shall annually provide the department with its proposed budget for the following authority fiscal year and shall provide the department with any additional documentation or information required by the department for its evaluation of the proposed uses of the state funds.

(d) Funding required by this subsection shall cease upon commencement of an alternate dedicated local funding source sufficient for the authority to meet its responsibilities for operating, maintaining, and dispatching the South Florida Rail Corridor. The authority and the department shall cooperate in the effort to identify and implement such an alternate dedicated local funding source before July 1, 2019. Upon commencement of the alternate dedicated local funding source, the department shall convey to the authority a perpetual commuter rail easement in the South Florida Rail Corridor and all of the department's right, title, and interest in rolling stock, equipment, tracks, and other personal property owned and used by the department for the operation and maintenance of the commuter rail operations in the South Florida Rail Corridor.

Section 3. Paragraph (d) is added to subsection (17) of section 341.302, Florida Statutes, to read:

341.302 Rail program; duties and responsibilities of the department.—The department, in conjunction with other governmental entities, including the rail enterprise and the private sector, shall develop and implement a rail program of statewide application designed to ensure the proper maintenance, safety, revitalization, and expansion of the rail system to

assure its continued and increased availability to respond to statewide mobility needs. Within the resources provided pursuant to chapter 216, and as authorized under federal law, the department shall:

(17) In conjunction with the acquisition, ownership, construction, operation, maintenance, and management of a rail corridor, have the authority to:

(d) Without altering any of the rights granted to the department under this section, agree to assume the obligations to indemnify and insure, pursuant to s. 343.545, freight rail service, intercity passenger rail service, and commuter rail service on a department-owned rail corridor, whether ownership is in fee or by easement, or on a rail corridor where the department has the right to operate.

Neither the assumption by contract to protect, defend, indemnify, and hold harmless; the purchase of insurance; nor the establishment of a self-insurance retention fund shall be deemed to be a waiver of any defense of sovereign immunity for torts nor deemed to increase the limits of the department's or the governmental entity's liability for torts as provided in s. 768.28. The requirements of s. 287.022(1) shall not apply to the purchase of any insurance under this subsection. The provisions of this subsection shall apply and inure fully as to any other governmental entity providing commuter rail service and constructing, operating, maintaining, or managing a rail corridor on publicly owned right-of-way under contract by the governmental entity with the department or a governmental entity designated by the department. Notwithstanding any law to the

contrary, procurement for the construction, operation, maintenance, and management of any rail corridor described in this subsection, whether by the department, a governmental entity under contract with the department, or a governmental entity designated by the department, shall be pursuant to s. 287.057 and shall include, but not be limited to, criteria for the consideration of qualifications, technical aspects of the proposal, and price. Further, any such contract for design-build shall be procured pursuant to the criteria in s. 337.11(7).

Section 4. 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 13, 2017

I respectfully request that **Senate Bill #842**, relating to SFTA Indemnification, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Frank Artiles
Florida Senate, District 40

The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 18, 2017

I respectfully request that **Senate Bill #226**, relating to Property Taxes, **Senate Bill #230,** relating to Nonnative Animals, **Senate Bill #282,** relating to Towing and Storage Fees, **Senate Bill #842,** relating to the South Florida Regional Transportation Authority, **Senate Bill #1310,** relating to State Employment, and **Senate Bill #1550,** relating to Health Information Technology be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Frank Artiles
Florida Senate, District 40

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04.25.17
Meeting Date

842
Bill Number (if applicable)

859032
Amendment Barcode (if applicable)

Topic TRANSPORTATION LIABILITY

Name VICKI WOOLDRIDGE

Job Title GOV. AFFRS. MGR.

Address 801 NW 33rd ST.
Street
POMPANO BEACH FL 33064
City *State* *Zip*

Phone 954-213-8690

Email wooldridgv@sfrta.fl.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SO. FLA. REGIONAL TRANSPORTATION AUTHORITY

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

4-25-17
Meeting Date

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

842
Bill Number (if applicable)

Topic SFRTA

Amendment Barcode (if applicable)

Name ANDRES Truvillo

Job Title Legislative Director

Address 11774 SW 137TH PATH
Street

Phone 786-348-5771

Miami FL 33186
City *State* *Zip*

Email FLTruvillo UTN@aol.c

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SMART-TRANSPORTATION DIVISION

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

4-25-17 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 842

Meeting Date *Bill Number (if applicable)*

Topic _____ *Amendment Barcode (if applicable)*

Name JESS McCARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1ST ST 2810 Phone 305-979-7110

Street

MIAMI FL 33128 Email JESS.MCCARTY@MIAMIDADE.GOV

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)

04.25.17
Meeting Date

842
Bill Number (if applicable)

Topic TRANSPORTATION LIABILITY

Amendment Barcode (if applicable)

Name VICKI WOOLDRIDGE

Job Title GOV. AFFRS. MGR.

Address 801 NW 33rd ST.
Street
POMPANO BCH FL 33064
City *State* *Zip*

Phone 954-213-8690

Email vwooldridge@sfrta.fl.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SO. FLA. REGIONAL TRANSPORTATION AUTHORITY

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)

Meeting Date	Bill Number (if applicable)
	CB 842

Topic Transportation

Amendment Barcode (if applicable)

Name Russell Roberts

Job Title VP Govt Affairs

Address 2855 LeJeune Rd (Street)

Phone 202-604-5955

Coral Gables FL 33134 (City / State / Zip)

Email rusty.roberts@FEC1.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida East Coast Industries

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 25, 2017
Meeting Date

SB 842
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Transportation

Name Jack Cory

Job Title Lobbyist

Address 730 E. Park Ave.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone

Email jackcory@paconsultants.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Stiles

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)

4/25/17
Meeting Date

842
Bill Number (if applicable)

Topic TRANSPORTATION

Amendment Barcode (if applicable)

Name DAVE ERICKS

Job Title LOBBYIST

Address 205 S ADAMS ST
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850-224-0800

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SOUTH FL TRANSPORTATION AUTHORITY

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 1310
INTRODUCER:	Governmental Oversight and Accountability Committee and Senators Artiles and Mayfield
SUBJECT:	State Employment
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ferrin	Ferrin	GO	**Fav/CS**
2.	Davis	Betta	AGG	**Recommend: Favorable**
3.	Davis	Hansen	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1310 eliminates the Florida State Employees Charitable Contribution Campaign (FSECC), and provides that an organization, entity, or person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, it does not prohibit:

- State-approved communications by entities with whom the state has contracted to provide employee benefits or services;
- Noncoercive voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

The bill may have a positive fiscal impact on state expenditures. The Department of Management Services (DMS) will no longer be required to procure the services of a fiscal agent or agents to receive, account for, and distribute charitable contribution among participating charitable organizations for the FSECC.

The bill has an effective date of July 1, 2017.

II. Present Situation:

The FSECC is an annual charitable fundraising drive funded by state employees and maintained by the DMS in coordination with the Department of Financial Services.[1] It is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours for which the state provides a payroll deduction.[2] Universities are permitted to participate in the campaign, but are also authorized to conduct their own charitable fundraising drives for employees.[3]

Employees' participation in the campaign is entirely voluntary, and officers and employees are required to designate a charitable organization to receive their contributions, unless the contributions are collected as part of a campaign event.[4] Each agency is responsible for conducting campaign events to promote and generate awareness of the campaign. Prior to 2016, agencies were authorized to collect cash donations at campaign events, however, in 2016, only payroll deductions were collected as part of the campaign as a cost saving measure.[5]

Organizations' participation in the annual campaign is limited to any nonprofit charitable organization that has as its principal mission:[6]

- Public health and welfare;
- Education;
- Environmental restoration and conservation;
- Civil and human rights; or
- The relief of human suffering and poverty.

Additionally, organizations ineligible to participate in the campaign include those:[7]

- Whose fundraising and administrative expenses exceed 25 percent;
- Whose activates contain an element that is more than incidentally political in nature or are primarily political, religious, professional, or fraternal in nature;
- That discriminate on account of race, color, religion, sex, national origin, age, handicap, or political affiliation;
- Not properly registered as a charitable organization as required by law;[8] and
- That have not received tax-exempt status under s. 501(c)(3) of the Internal Revenue Code.

Over 1,000 charities have been approved to participate in the FSECC through the application process established by the DMS's Division of Human Resources.[9] Charitable organizations

[1] Section 110.181(1)(a), F.S.
[2] *Id.*
[3] Section 110.181(5), F.S. See also 1001.706, F.S.
[4] Section 110.181(1)(b), F.S.
[5] Email from Samantha Ferrin, Department of Management Services, Deputy Director of Legislative and External Affairs (March 30, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).
[6] Section 110.181(1)(c), F.S.
[7] Section 110.181(1)(e), F.S.
[8] *See* the Solicitation of Contributions Act, ss. 496.401-496.424, F.S.
[9] Department of Management Services, *HB 1141 Legislative Bill Analysis* (March 14, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

participating in the campaign must be audited annually by an independent public accountant whose examination conforms to generally accepted accounting principles.[10]

Current law requires the DMS to competitively procure a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations,[11] and provides for the establishment of a Florida State Employees Charitable Campaign Steering Committee to make recommendations relating to the administration of the campaign.[12] The committee is made up of seven members appointed by the Administration Commission[13] and two members appointed by the Secretary of the DMS.[14] The Steering Committee meets periodically, usually once or twice each year.[15]

The DMS historically awarded the fiscal agent contract to a nonprofit charitable organization that participated in the FSECC, but in 2010, the fiscal agent selection process was opened and services were competitively procured through Solix Grant Management Solutions (Solix) for the period January 1, 2013, through December 31, 2015.[16] The initial contract with Solix provided for tiered compensation, with a minimum of $546,415 for year one of the contract and actual documented costs for years two and three.[17]

In 2015, the DMS entered into a new three-year contract with Solix for the period January 1, 2016, through December 31, 2018.[18] For this contract period, fixed fees were initially agreed to for $389,297 in year one, $399,769 in year two, and $411,631 in year three.[19] However, on April 15, 2016, the DMS and Solix agreed to amended contract terms that provided for a fixed $180,000 fee for each year of the contract.[20]

In May of 2016, the State of Florida Auditor General published an operational audit of the FSECC, finding that during the time period covered by the initial contract with Solix the DMS did not ensure FSECC fiscal agent fees were supported by adequate documentation and did not adequately verify that employee contributions were appropriately distributed to participating charitable organizations.[21] Prior to publication of the audit, the renewed contract with the fiscal

[10] Section 110.181(1)(d), F.S.
[11] Section 110.181(2)(a), F.S.
[12] Sections 110.181(3) and (4), F.S.
[13] *See* s. 14.02, F.S. The Administration Commission is composed of the Governor and Cabinet.
[14] Section 110.181(4), F.S.
[15] *See supra* note 5.
[16] State of Florida Auditor General's Operational Audit of the Department of Management Services Florida State Employees' Charitable Campaign Report No. 2016-194. Available at http://www.myflorida.com/audgen/pages/pdf_files/2016-194.pdf. (last visited March 30, 2017).
[17] Contract for FSECC Fiscal Agent Services Between the State of Florida Department of Management Services and Solix, Inc. Contract No.: DMS 11/12-018. (on file with the Senate Committee on Governmental Oversight and Accountability).
[18] Contract for FSECC Fiscal Agent Services Between the State of Florida Department of Management Services and Solix, Inc. Contract No.: DMS 14/14-030. Available at: https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=HRM01. (last visited March 30, 2017).
[19] *Id.*
[20] Amendment NO.:1 to Contract No.: DMS 14/15-030. Available at https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=HRM01. (last visited March 30, 2017).
[21] *See supra* note 16.

agent had been modified to provide for a fixed fee and the DMS had implemented a procedure for verifying the distributions—therefore the need for corrective action was eliminated.[22]

On December 5, 2016, the secretary of DMS notified state agencies that the campaign was being suspended because it had only raised approximately $282,000, which was its lowest amount in the campaign's history.[23]

During its 36-year history, the FSECC raised over $94 million.[24] However, over the last ten years contributions have declined sharply, as illustrated by the following table.[25]

Campaign Year	Fiscal Agent	Charitable Contributions	Amount withheld by Fiscal Agent	Net Amount to Participating Charities	Fiscal Agent Costs as % of Contributions
2005-2006	United Way	$ 4,963,346	$ 691,065	$ 4,272,281	13.9%
2006-2007	United Way	$ 4,959,059	$ 703,479	$ 4,255,580	14.2%
2007-2008	United Way	$ 4,869,270	$ 706,683	$ 4,162,587	14.5%
2008-2009	United Way	$ 4,362,662	$ 923,931	$ 3,438,731	21.2%
2009-2010	United Way	$ 4,171,177	$ 850,877	$ 3,320,300	20.4%
2010-2011	United Way	$ 3,739,355	$ 801,032	$ 2,938,323	21.4%
2011-2012	United Way	$ 2,688,902	$ 796,616	$ 1,892,286	29.6%
2012-2013	Solix, Inc.	$ 1,762,030	$ 546,415	$ 1,215,615	31.0%
2013-2014	Solix, Inc.	$ 982,387	$ 470,470	$ 511,917	47.9%
2014-2015	Solix, Inc.	$ 869,004	$ 453,599	$ 415,405	52.2%
2015-2016	Solix, Inc.	$ 546,186	$ 180,000	$ 366,186	33.0%
2016-2017	Solix, Inc.	$ 282,000	$ 180,000	$ 102,000	63.8%

III. Effect of Proposed Changes:

Section 1 repeals s. 110.181, F.S., eliminating the FSECC.

Section 2 creates s. 110.182, F.S., providing that an organization, entity, or person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, it does not prohibit:

- State-approved communications by entities with whom the state has contracted to provide employee benefits or services;
- Noncoercive voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

[22] *Id.*
[23] *State scraps Solix contract, suspends charity campaign*, Tallahassee Democrat, December 8, 2016, available at http://www.tallahassee.com/story/news/2016/12/08/state-suspends-beleagured-fsecc/95139288/ (last visited March 30, 2017).
[24] Department of Management Services, *Donor Frequently Asked Questions*, question 1, page 2, available at http://www.dms.myflorida.com/content/download/128373/798921/FAQ-Donor-2016.pdf. (last visited March 30, 2017).
[25] Figures provided in an email from Taylor Hatch, Department of Management Services, Senior Director of Policy and Legislative Affairs November 17, 2016 (on file with the Senate Committee on Governmental Oversight and Accountability).

Section 3 provides an effective date of 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 fiscal impact of the bill is indeterminate. Charitable organizations may see a decrease in contributions as a result of the bill. However, charitable giving appears to be at an all-time high.[26]

C. Government Sector Impact:

According to the DMS, the bill has no fiscal impact.[27] However, the bill may have a positive fiscal impact on the DMS, because it will no longer be required to procure the services of a fiscal agent or agents to receive, account for, and distribute charitable contribution among participating charitable organizations for the FSECC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[26] National Philanthropic Trust, *Charitable Giving Statistics*. Available at: https://www.nptrust.org/index.php?/philanthropic-resources/charitable-giving-statistics. (last visited March 30, 2017). March 30, 2017).
[27] Department of Management Services, *HB 1141 Legislative Bill Analysis* (March 14, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

VIII. Statutes Affected:

This bill repeals section 110.181 of the Florida Statutes.

This bill creates section 110.182 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on April 3, 2017:
Adds exceptions to the prohibition on solicitation of state employees within work areas during work hours for:

- Noncoercive voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

B. Amendments:

None.

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

585-03378-17 20171310c1

A bill to be entitled

An act relating to state employment; repealing s. 110.181, F.S., relating to Florida State Employees' Charitable Campaign; creating s. 110.182, F.S.; prohibiting an organization, entity, or person from intentionally soliciting state employees for fundraising or business purposes within specified areas during specified times; providing exemptions; providing an effective date.

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

Section 1. Section 110.181, Florida Statutes, is repealed.

Section 2. Section 110.182, Florida Statutes, is created to read:

110.182 Solicitation of state employees prohibited.—An organization, entity, or person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. This section does not prohibit the following:

(1) State-approved communications by entities with whom the state has contracted to provide employee benefits or services.

(2) Noncoercive voluntary communications between state employees in workplace areas.

(3) Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

Section 3. 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 13, 2017

I respectfully request that **Senate Bill #1310**, relating to State Employment, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Frank Artiles
Florida Senate, District 40

The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 18, 2017

I respectfully request that **Senate Bill #226**, relating to Property Taxes, **Senate Bill #230,** relating to Nonnative Animals, **Senate Bill #282,** relating to Towing and Storage Fees, **Senate Bill #842,** relating to the South Florida Regional Transportation Authority, **Senate Bill #1310,** relating to State Employment, and **Senate Bill #1550,** relating to Health Information Technology be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Frank Artiles
Florida Senate, District 40

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

SB 1310
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Samantha Ferrin

Job Title Deputy Legislative Affairs Director

Address 4050 Esplanade Way
Street

Phone _____

_____
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing DMS

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

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
1/9/17	SM	**Favorable**
2/22/17	JU	**Fav/CS**
4/17/17	AHS	**Recommend: Favorable**
4/24/17	AP	**Favorable**

January 9, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 38** – Judiciary Committee and Senator Lizabeth Benacquisto
HB 6511 – Representative Mike Miller
Relief of L.T. by the State of Florida

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR $800,000 FROM GENERAL REVENUE BASED ON A SETTLEMENT AGREEMENT BETWEEN THE LEGAL GUARDIAN OF L.T. AND THE DEPARTMENT OF CHILDREN AND FAMILIES FOR THE SEXUAL ABUSE SUFFERED BY L.T. WHEN SHE WAS LEFT BY THE DEPARTMENT IN THE FOSTER CARE OF A REGISTERED SEX OFFENDER

CURRENT STATUS:

On December 14, 2010, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 18 (2012). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment to correct an erroneous claim amount. (The 2012 bill failed to account for the $200,000 that DCF had already paid; therefore, the proper claim amount was $800,000 rather than $1,000,000.) The 2012 Special Master's Final Report is attached as an addendum to this report. The amount claimed in SB 38 (2017) on the date of this report is $800,000.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Mary K. Kraemer. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have significantly altered the findings or recommendation in the previous report.

The provisions of SB 38 (2017) address and update the circumstances (with additional detail) upon which the claim for relief is based. It should be noted that the prior claim bill, SB 18 (2012), evaluated by the then-Senate special master, sought relief of the claimant as a minor. The record reflects that the claimant is now over the age of eighteen.

SB 38 requires that after "payment of attorney fees and costs, lobbying fees, and other similar expenses relating to this claim; outstanding medical liens other than Medicaid liens and other immediate needs," the remaining funds are to be placed in a trust for the exclusive use and benefit of the claimant. (see Section 2). SB 38 requires that all Medicaid liens from the treatment and care of claimant due to the injuries and damages to her shall be waived or paid by the State (see Section 4).

Administration of the trust will be handled by an institutional trustee selected by the claimant, until the trust is terminated upon the claimant's 25th birthday when the remaining principal and interest will revert to the claimant. In case of the claimant's death prior to termination of the trust, any remaining trust funds will revert to her heirs, beneficiaries, or estate.

The position of the Department of Children and Families (DCF) on the settlement of the case by payment as described in the bill is unchanged. Counsel for DCF stated in a letter dated November 30, 2016 that "DCF needs to continue to have claim bills funded from General Revenue. DCF is operating at minimal trust fund reserves that are essential to meeting cash flow and Department program needs. Any appropriation from a trust fund could have an effect on DCF operations and its ability to meet future related obligations."

In update letters dated December 12, 2016 and December 13, 2016, claimant's counsel states that DCF "specifically agreed to support a claim bill for $800,000 as the unpaid balance of the mediated settlement amount of $1,000,000 pursuant to a Mediation Settlement Agreement) between DCF and claimant's then-guardian dated June 21, 2010. The Agreement defines DCF's support "to include all those actions . . . set forth in the Archille v. DCF case. Claimant's counsel cites to the Act for the Relief of [Archille] enacted in 2010-235, *Laws of Florida*. Claimant's counsel provided a copy of the Settlement Agreement in that matter from 2007, which states support of a claims bill "shall include personal support by the Secretary [of DCF], including reasonable and good faith efforts to personally appear and testify before the legislature at hearings", although not "requiring the Secretary's personal appearance or attendance at any particular meeting, hearing or session."

The position of Claimant's counsel's position is the Legislature should be assisted by DCF to fund the Mediation Settlement Agreement that resolve the lawsuit filed on L.T.'s behalf.

Claimant's counsel also provided a summary of claimant's report of her current status, which indicates:

1. Claimant's name is now "L.A." She is married and lives with her husband and two daughters in Jacksonville, where her husband, Petty Officer D.A. is an active duty hospital Corpsman, stationed at the naval base there;

2. Claimant is working toward her bachelor's degree in general psychology at Florida State College at Jacksonville. She plans to pursue a master's degree next fall and a doctoral program thereafter. Claimant's career goal is to become a pediatric mental health specialist, for the treatment of children who have suffered trauma; and

3. Claimant continues to undergo therapy and takes daily medication to address the continuing effects of her trauma.

CONCLUSIONS OF LAW:

See the Conclusions of Law on page 3 of the attached Special Master's Final Report dated December 1, 2011, which were made in the de novo proceeding on a previous version of the bill.

ATTORNEYS FEES: SB 38 requires that the total amount paid for attorney fees, lobbying fees, costs, and other similar expenses related to the claim may not exceed 25 percent of the award (i.e., not exceeding $200,000 of the proposed $800,000 payment to the trust created for the benefit of the claimant).

RECOMMENDATIONS: That SB 38 be reported FAVORABLY, based on the conclusions in the attached Special Master's Final Report dated December 1, 2011 (page 3) as reached by the administrative law judge from the Division of Administrative Hearings, that:

DCF has a duty to exercise reasonable care when it places foster children and to protect them from known dangers, and DCF knew or should have known of the serious risk of harm to L.T. These breaches of duty were the proximate cause of the injuries that L.T. suffered.

Respectfully submitted,

Mary K. Kraemer
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include the limits on costs, lobbying fees, and other similar expenses, which were included in the original bill.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

	COMM	ACTION
12/1/11	SM	Fav/1 amendment

December 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate Suite
409, The Capitol Tallahassee, Florida
32399-110

Re: **SB 18 (2012)** Senator Jeremy Ring
Relief of L.T., a Minor

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR $800,000 FROM GENERAL REVENUE BASED ON A SETTLEMENT AGREEMENT BETWEEN THE LEGAL GUARDIAN OF L.T. AND THE DEPARTMENT OF CHILDREN AND FAMILIES FOR THE SEXUAL ABUSE SUFFERED BY L.T. WHEN SHE WAS LEFT BY THE DEPARTMENT IN THE FOSTER CARE OF A REGISTERED SEX OFFENDER.

FINDINGS OF FACT:

In August 1995, when LT. was less than two years old, the Department of Children and Families (DCF) removed LT. and her brother from their mother and placed them in the foster care of their great uncle, Eddie Thomas, and his wife, who lived in Gadsden County. Less than a year after the placement, Thomas was charged with sexually molesting a 13-year-old girl. He plead no contest to lewd, lascivious,' or indecent assault upon a child and was sentenced to five years' probation and required to receive sex abuse counseling. He was also registered as a sex offender.

Despite the fact that DCF was aware of Thomas' conviction and his registration as a sex offender, it decided

that the risk of harm to L.T. was low and did not remove L.T. from Thomas' care and custody. DCF also terminated protective supervision of L.T., meaning that a social worker no longer visited the Thomas home from time to time to see how L.T. was doing. Protective supervision is often terminated by DCF when a child is placed with a relative and DCF is satisfied that supervision is unnecessary.

In 2004, when L.T. was 10 years old, DCF placed an adolescent girl in the foster care of the Thomases. A few months after the placement, this minor girl ran away from the house in the middle of the night, claiming that Thomas had attempted to sexually molest her. DCF removed this girl from the Thomas home, but DCF did not re-evaluate the placement of LT. with Thomas.

In March 2005, when L.T. was 11 years old (and Thomas was 44), she ran away from home and told authorities that she had been repeatedly sexually abused by Thomas. She also said that Thomas and his wife used drugs. DCF then removed L.T. from the Thomas home.

It was later revealed by L.T. that she was roughly disciplined by the Thomases and that they were verbally abusive to her, frequently calling her derogatory names and telling her that she was worthless.

L.T. is now 17 years old and in a good foster home. However, as a result of the sexual abuse she endured while living with Thomas, L.T. suffers from post traumatic stress disorder, depression, and low self esteem. She has occasionally attempted suicide and for 10 months was a resident of Tampa Bay Academy, a mental health facility. She is receiving psychological counseling and will likely need counseling for many years. A trial consultant projected her future lost earnings as $540,000. Her projected future medical expenses are $760,000 to $11,580,000, depending on the degree of psychological therapy and supervision she might need, the higher figure reflecting the costs of institutionalization. A conservative estimate of her total future economic losses is around $2 million.

LITIGATION HISTORY:

In 2009, a lawsuit against DCF was filed in the Second Judicial Circuit by L.T.'s aunt and legal guardian. The case was successfully mediated and the parties entered into a

settlement agreement pursuant to which L.T. would receive $1,000,000. The sovereign immunity limit of $200,000 was paid and the balance of $800,000 is sought through this claim bill. The court order approving the settlement agreement requires that the net proceeds to L.T. be placed in a special needs trust. After deducting legal fees and costs from the $200,000, and accounting for a Medicaid lien, $11,084 remained to be placed in a special needs trust for L.T.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether DCF is liable in negligence for the injuries suffered by L.T., and, if so, whether the amount of the claim is reasonable.

DCF has a duty to exercise reasonable care when it places foster children and to protect them from known dangers. DCF breached that duty when it learned that Thomas had been convicted of a sexual offense on a child, but did not remove L.T. from the Thomas home. DCF acted negligently again when it did not remove L.T. following the charge of sexual abuse against Thomas made by another foster child in 2004. DCF knew or should have known that Thomas posed a serious risk of harm to L.T. These breaches of duty were the proximate cause of the injuries that L.T. suffered.

The amount of the claim is fair and reasonable.

ATTORNEY'S FEES:

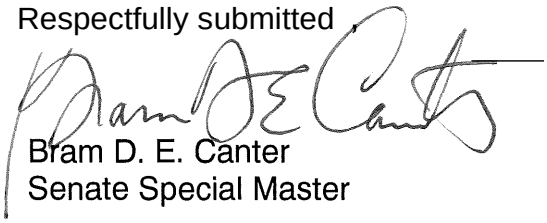
In compliance with s. 768.28(8), Florida Statutes, LT.'s attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature.

OTHER ISSUES:

The bill erroneously states that the claim is for $1 million, failing to account for the $200,000 that DCF has already paid. The bill should be amended to state that the claim is for $800,000.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 18 (2012) be reported FAVORABLY, as amended.

Respectfully submitted,



Bram D. E. Canter
Senate Special Master

cc: Senator Ring
Debbie Brown, Secretary of the Senate
Counsel of Record

By the Committee on Judiciary; and Senator Benacquisto

590-01953-17 201738c1

A bill to be entitled

An act for the relief of L.T.; providing an appropriation to compensate L.T. for injuries and damages sustained as a result of the negligence of employees of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing legislative intent regarding certain Medicaid liens; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on August 15, 1995, the Department of Children and Families removed 14-month-old L.T. and her infant brother from their mother's custody because they were not receiving adequate care, and

WHEREAS, the Department of Children and Families temporarily placed the children into the home of the children's great aunt and uncle, Vicki and Eddie Thomas, and

WHEREAS, a background check that was conducted shortly after L.T. and her brother were placed in the Thomases' home indicated that Mr. Thomas had once been convicted of a misdemeanor and possession of narcotics equipment, and

WHEREAS, the background check also revealed that Ms. Thomas had been charged with, but apparently not convicted of, larceny, and

WHEREAS, the background check did not reveal any prior history of violence, sex offenses, or child abuse, and

WHEREAS, after conducting a home study, interviews, and an investigation, the Department of Children and Families concluded

590-01953-17 201738c1

that the Thomases were capable of providing a safe home for L.T. and her brother and approved the placement, and

WHEREAS, on August 21, 1996, approximately 1 year after L.T. and her brother had been placed in the Thomases' home, Mr. Thomas was charged with committing a lewd and lascivious act on a child under the age of 16, and

WHEREAS, the alleged victim was the 13-year-old daughter of a woman with whom Mr. Thomas was having an extramarital affair, and the state later amended the charge to add a count for sexual battery on a child by a familial or custodial authority, and

WHEREAS, after two hung jury trials in January and March of 1997, Mr. Thomas pled no contest in April 1997 to committing a lewd, lascivious, and indecent act on a child under the age of 16, and

WHEREAS, Mr. Thomas was sentenced to 5 years' probation and required to attend sex offender classes and register as a sex offender, and

WHEREAS, on May 9, 1997, 1 month after Mr. Thomas entered his plea and was convicted of a child sex crime, the Department of Children and Families recommended, and the judge approved, an order allowing Mr. Thomas to return home and have unsupervised contact with the children, and

WHEREAS, although the policies of the Department of Children and Families barred Mr. Thomas from being able to adopt a child because of his conviction for a sex act with a child and his sex offender status, the policies did not prohibit the continued placement of L.T. and her brother in the Thomases' home, and so the children remained with the Thomases, and

WHEREAS, the Department of Children and Families

subsequently recommended to the court the permanent, long-term placement of L.T. and her brother in the Thomases' home and further recommended that the children be removed from protective services, with no further supervision by the department, and

WHEREAS, on March 3, 2000, following the recommendation of the Department of Children and Families, the court approved L.T. and her brother's long-term placement with the Thomases and removed the children from continued protective services, and

WHEREAS, on March 24, 2003, an abuse hotline call to the Department of Children and Families reported that L.T. was being abused by Mr. Thomas and that both Mr. and Ms. Thomas were using drugs in the children's presence, and

WHEREAS, the next day, a child protective investigator for the Department of Children and Families interviewed L.T. and her brother while in the presence of Ms. Thomas, and neither child was asked to be interviewed outside Ms. Thomas's presence, and

WHEREAS, L.T. and her brother denied the abuse allegations while Ms. Thomas watched and listened to them, and

WHEREAS, results from new background checks and drug screens were negative, and the Department of Children and Families concluded that L.T. and her brother were not at risk of abuse and closed the case, and

WHEREAS, on February 24, 2005, L.T. ran away from the Thomases' home and was found by law enforcement officers, and

WHEREAS, L.T. ran away from home because she had been repeatedly sexually and physically abused by Mr. Thomas and physically, verbally, and emotionally abused for years by Ms. Thomas, and

WHEREAS, L.T. and her brother were finally removed from the

Thomases' home in 2005, and

WHEREAS, during her adolescent and teenaged years, L.T. was the subject of repeated Baker Act proceedings and suicide attempts and was in and out of inpatient and outpatient psychiatric facilities, and

WHEREAS, L.T. has been seen and treated by physicians and mental health care professionals who have diagnosed her with depression, posttraumatic stress disorder, anxiety disorder, and other disorders attributed to her trauma, and

WHEREAS, although L.T. struggles with the symptoms of depression, posttraumatic stress disorder, and anxiety disorder, she is now 22 years of age, is married to a Naval Petty Officer who is stationed at Naval Air Station Jacksonville, is the mother of 2 very young daughters, and attends Florida State College at Jacksonville as she works toward her goal of becoming a mental health care professional specializing in treating children who have been abused, neglected, or traumatized, and

WHEREAS, a lawsuit was brought on L.T.'s behalf in state and federal courts alleging negligence pursuant to s. 768.28, Florida Statutes, and civil rights violations pursuant to 42 U.S.C. s. 1983, and

WHEREAS, the civil rights claims were disposed of by the trial court, but the negligence claims continued to be litigated, and a jury trial of the case was set in Leon County, and

WHEREAS, the parties attended a court-ordered mediation and on June 21, 2010, agreed to a mediated settlement under which L.T. will receive $1 million, of which $200,000 has been paid, and the claim for the remaining $800,000 is being submitted

through this bill, which the Department of Children and Families agrees to support, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. There is appropriated from the General Revenue Fund to the Department of Children and Families the sum of $800,000 for the relief of L.T. for the injuries and damages she sustained. After payment of attorney fees and costs, lobbying fees, and other similar expenses relating to this claim; outstanding medical liens other than Medicaid liens; and other immediate needs, the remaining funds shall be placed into a trust created for the exclusive use and benefit of L.T. The trust shall be administered by an institutional trustee of L.T.'s choosing and shall terminate upon L.T.'s 25th birthday, at which time the remaining principal and interest shall revert to L.T. or, if she predeceases the termination of the trust, to her heirs, beneficiaries, or estate.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of L.T. in the sum of $800,000 upon funds in the State Treasury to the credit of the Department of Children and Families, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury not otherwise appropriated.

Section 4. It is the intent of the Legislature that any and all Medicaid liens arising from the treatment and care of the injuries and damages to L.T. described in this act shall be

waived or paid by the state.

Section 5. The amount awarded pursuant to the waiver of sovereign immunity under s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the injuries and damages to L.T. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 6. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules, *Chair*
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR LIZBETH BENACQUISTO
27th District

April 18, 2017

The Honorable Jack Latvala
Senate Appropriations, Chair
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 38- Relief of LT by State of Florida

Dear Mr. Chairman:

Please allow this letter to serve as my respectful request to agenda SB 38, Relating to Relief of LT by the State of Florida, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Lizbeth Benacquisto
Senate District 27

Cc: Mike Hansen

REPLY TO:
❒ 2310 First Street, Unit 305, Fort Myers, Florida 33901 (239) 338-2570
❒ 400 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
2/2/17	SM	**Favorable**
2/22/17	JU	**Fav/CS**
4/17/17	AHS	**Recommend: Favorable**
4/24/17	AP	**Favorable**

February 2, 2017

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 50** – Judiciary Committee and Senators Audrey Gibson and Randolph Bracy
Relief of Eddie Weekley and Charlotte Williams

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED CLAIM BILL BY EDDIE WEEKLEY AND CHARLOTTE WILLIAMS OF THE ESTATE OF FRANKLIN WEEKLEY, FOR $1 MILLION, BASED ON A FINAL JUDGMENT SUPPORTED BY A SETTLEMENT AGREEMENT BETWEEN MR. WEEKLEY AND MS. WILLIAMS AND THE AGENCY FOR PERSONS WITH DISABILITIES AS COMPENSATION FOR THE DEATH OF FRANKLIN WEEKLEY AT THE SUNLAND CENTER IN MARIANNA IN 2002.

CURRENT STATUS:

A claim bill for these Claimants was first filed in the 2008 Session.

An administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master, held a de novo hearing on the 2008 version of this bill, SB 30 (2008). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Barbara M. Crosier. My responsibilities were to review the records relating to the claim

bill, be available for questions from Senators, and determine whether any changes have occurred since the hearing before Judge T. Kent Wetherell, which if known at the hearing, might have significantly altered the findings or recommendations in the report.

According to counsel for the parties, there have been no substantial changes in the facts and circumstances for the underlying claim. Accordingly, I find no cause to alter the findings and recommendations of the original report.

For the reasons set forth above, the undersigned recommends that Senate Bill 50 (2017) be reported favorably.

Respectfully submitted,

Barbara M. Crosier
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include the limits on costs, lobbying fees, and other similar expenses, which were included in the original bill.

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
02/05/08	SM	Fav/1 amendment

February 5, 2008

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 30 (2008)** – Senator Al Lawson
HB 451 (2008) – Representative Matthew Meadows
Relief of Eddie Weekly and Charlotte Williams

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNOPPOSED EQUITABLE CLAIM FOR $1 MILLION AGAINST THE AGENCY FOR PERSONS WITH DISABILITIES ARISING OUT OF THE DEATH OF FRANKLIN WEEKLY AT THE SUNLAND CENTER IN MARIANNA IN 2002.

FINDINGS OF FACT:

Franklin Weekly was committed to the care of the Department of Children and Family Services (DCF) in 1999 after he was determined to be incompetent to stand trial for the alleged arson of his home. Franklin was 15 years old at the time, but he had the mental capacity of a first grader and Franklin was mildly retarded with an IQ between 52 and 65.

Franklin was initially placed in group homes in Orlando and Ft. Walton Beach. However, those facilities proved to be inadequate for Franklin because of his behavioral problems and because he ran away on several occasions.

In November 2001, Franklin was transferred by court order to the Sunland Center (Sunland) in Marianna. DCF recommended to the court that Franklin be placed at Sunland because it was a more secure facility and could provide the constant supervision that Franklin required. DCF and Sunland

staffs were aware that Franklin did not have "survival skills" and that he would be at risk of serious injury or death if he ran away from the facility.

DCF was, at the time, responsible for operating Sunland. When the Agency for Persons with Disabilities (APD) was created in 2004, it became responsible for operating Sunland.

At Sunland, Franklin lived in the Hayes House with 22 other developmentally disabled individuals. The house had three exits, only two of which had locked doors. The door right across from Franklin's room did not lock.

On December 5, 2002, Franklin was involved in several altercations with other residents and staff members that required him to be physically restrained. He also attempted to run away that day.

Two staff members, Gertrude Sims and James Duncan, were on duty at the Hayes House the night of December 5. Their shift started at 10:15 p.m. and went to 6:15 a.m. the following day.

The primary job duties of Ms. Sims and Mr. Duncan were custodial in nature, e.g., doing laundry, mopping floors, etc. They were also responsible for making sure that all of the residents were accounted for throughout the night, and to that end, Ms. Sims was responsible for making "rounds" on the residents every 30 minutes to be sure they were asleep in their beds.

Ms. Sims testified in her deposition that she made her rounds every 30 minutes from 10:30 p.m. to 5:30 a.m. and that she observed Franklin sleeping in his bed each time she checked his room. She and Mr. Duncan also testified that at least one of them was stationed at all times at a desk near the unlocked door across from Franklin's room.

Notwithstanding this testimony, the more persuasive evidence establishes that the door was not being watched for at least a short period after Ms. Sims made her 5:30 a.m. rounds because Ms. Sims and Mr. Duncan were tending to a resident who had soiled himself. Mr. Duncan testified in his deposition that the soiled resident was in Room D, which was Franklin's room and that he recalled seeing Franklin sleeping, but

Ms. Sims testified that the soiled resident was in Room B. Ms. Sims' testimony is more credible because she had been working at the Hayes House for a number of years, whereas Mr. Duncan was "pulled" to the Hayes House just for that night because of a staffing issue.

While Ms. Sims and Mr. Duncan were tending to the resident in Room B and the unlocked doors were unsupervised, Franklin left the Hayes House through those doors. Mr. Duncan discovered that Franklin was missing after he finished helping Ms. Sims with the soiled resident and he made his way into Franklin's room to mop the connected bathroom.

Ms. Sims and Mr. Duncan notified Sunland's main office that Franklin was missing, and a search for Franklin on the Sunland campus was immediately commenced. Local law enforcement was also notified. They assisted in the search.

Franklin's parents were notified of his disappearance at approximately 8:30 a.m., and they immediately came to the Sunland to help in the search. It not entirely clear whether or to what extent they were allowed to help in the search, but Franklin's father testified that at some point the family was told that they could no longer assist in the search on the Sunland property.

One of the buildings on the Sunland campus searched in the days following Franklin's disappearance was a dilapidated building known as the "boiler building." The building was several hundred yards from the Hayes House and was being used for storage. The doors on the building were chained and padlocked, but there was enough space for a person to fit between the doors and get into the building.

Butch Edwards, the maintenance and construction supervisor at Sunland, testified that he went into the building during the search for Franklin but that he saw no sign of him. He testified that he could not get all the way to the back of the building because it was full of junk.

Sunland suspended the search for Franklin after approximately 2 weeks. His family continued to search for him, and from time to time there were unconfirmed sightings of Franklin reported around Northwest Florida. At some point,

Franklin's parents were accused of harboring Franklin by Sunland staff and/or local law enforcement of harboring Franklin. In January 2003, Franklin was found in contempt of the Order committing him to Sunland due to his apparent elopement from the facility.

In October 2004, contractors hired to demolish the dilapidated boiler building found what turned out to be Franklin's remains in a basement of the building. The only clothing found with the remains was decomposed underwear and an undershirt with Franklin's name written on them.

There is no credible evidence that Franklin ever left the Sunland campus after he ran away from the Hayes House. The weather on the day of his disappearance was very cold, and it is more likely than not that Franklin died of exposure to the elements in the building where he was ultimately found.

In January 2005, the Bay County Medical Examiner determined that the remains were those of Franklin. A death certificate was issued and the remains were released to Franklin's parents for burial. However, it was not until 2007 that DCF and APD formally acknowledged that the remains were those of Franklin. DNA tests performed by the Florida Department of Law Enforcement (FDLE) confirmed that the remains are Franklin's.

FDLE commenced an investigation into Franklin's disappearance in 2007. The FDLE investigation was still open as of the date of the Special Master hearing, but the claimants' attorney represented that it was his understanding that the FDLE investigation would soon be closed based upon a lack of evidence of a crime having been committed in relation to Franklin's disappearance and death.

Franklin was survived by his parents, Eddie Weekly and Charlotte Wheeler, and a younger brother. Franklin's parents are not married, but they have been together for 23 years.

Franklin's parents are developmentally disabled and are unable to work. His father receives assisted living services from the local Association for Retarded Citizens. To be eligible for such services, a person has to have an IQ below 70.

By all accounts, Franklin and his parents had a very close relationship. Franklin wanted to go home to his parents and Franklin's parents wanted him to come home. Franklin's parents were "devastated" by Franklin's disappearance and death.

Special needs trusts have been established for Franklin's parents because of their developmental disabilities. The trusts are subject to federal law (e.g., 42 U.S.C. § 1396p), which requires that any assets remaining in the trust upon the beneficiary's death first be used to repay state Medicaid benefits.

APD provided an affidavit stating that it does not have funds available to pay this claim. The affidavit represents that APD might lose federal funding and that its ability to provide necessary services to disabled individuals would be "seriously impaired" if APD was required to pay this claim from its budget without an additional appropriation of General Revenue.

In July 2004, in response to Franklin's disappearance, DCF adopted a detailed protocol to be followed when a Sunland resident goes missing. The protocol requires, among other things, that the perimeter of the facility be immediately secured and that "an intense immediate area search, expanding outward of the last contact site" be conducted.

LEGAL PROCEEDINGS:

In 2004, before Franklin's remains were found, Franklin's parents filed a lawsuit against DCF that sought to require DCF to resume searching for Franklin. After Franklin's remains were discovered, the suit was amended to allege a wrongful death claim. The suit also included a civil rights claim under 42 U.S.C. § 1983 against Ms. Sims and Mr. Duncan.

The case was settled through mediation in June 2007, after DCF and APD acknowledged that the remains found at Sunland were Franklin's. The settlement agreement required APD to pay Franklin's parents a total of $1.3 million.

The settlement was approved by the circuit court in August 2007. The Order approving the settlement requires the proceeds to be paid into "a Medicaid-compliant special needs trust account."

APD has paid Franklin's parents $300,000, with $200,000 attributed to the tort claims and $100,000 attributed to the civil rights claim. APD agreed as part of the settlement to support a claim bill for the remaining $1 million.

Franklin's parents received $184,464.38 from the initial $300,000 payment. Those funds were split equally, with each parent receiving $92,231.19.

The remainder of the initial payment went to attorney's fees and costs. The claimants' attorney agreed to take only $37,500 in fees from the initial payment, which is half of the 25% attorney's fee for the initial payment. The remainder of the fee was "deferred" until the claim bill is paid.

CLAIMANT'S POSITION:

- DCF, the predecessor agency to APD, had a duty to safeguard Franklin's well-being while he was at Sunland, and DCF's failure to adequately supervise Franklin on the night he disappeared was the direct and proximate cause of his death.

- The $1.3 million in damages agreed to by the parties are reasonable under the circumstances.

AGENCY'S POSITION:

- APD admits liability and supports the claim bill.

- APD does not have the funds available to pay the claim without an additional appropriation of General Revenue.

CONCLUSIONS OF LAW:

APD is the successor agency to DCF with respect to the operation of Sunland. Therefore, APD is the agency responsible for paying this claim even though the incident giving rise to the claim occurred while DCF operated Sunland. See Ch. 2004-267, § 87(3), Laws of Fla.

DCF had a duty to safeguard Franklin's well-being while he was confined at Sunland. That duty was breached when Sunland staff left the unlocked doors across from Franklin's room at the Hayes House unsupervised. Franklin's elopement and death were foreseeable consequences of the staff's failure to adequately supervise him because Sunland staff knew that he was an elopement risk and that he lacked the skills to survive if he did elope. The failure of the Sunland staff to supervise Franklin was a direct and proximate cause of his death.

There is no evidence that Franklin had any earning capacity as a result of his mental retardation. The $1.3 million in damages agreed to by the parties are attributable to the non-economic damages (e.g., mental anguish) suffered by Franklin's parents as a result of his disappearance and death.

There is no way to place a value on the mental anguish suffered by a parent who loses a child, and a jury may have awarded far more than $1.3 million in damages to Franklin's parents if this case had gone to trial. The amount agreed to by the parties in the mediated settlement is within the range of reasonableness for such an award. Indeed, in the recent Martin Anderson case, the Legislature approved a claim bill for $5 million for the parents of a child who died while in the custody of the State.

LEGISLATIVE HISTORY:

This is the first year that this claim has been presented to the Legislature.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

The Order approving the parties' settlement states that the circuit court will determine the amount of attorney's fees to be paid from the proceeds of the claim bill. However, that is an issue for the Legislature, not the circuit court. See Gamble v. Wells, 450 So.2d 850 (Fla. 1984).

The claimants' attorney provided an affidavit stating that attorney's fees are limited to 25%, as required by Section 768.28(8), F.S. There are no outstanding costs.

In order to maximize the proceeds that were paid to Franklin's parents, the claimants' attorney took only $37,500 in attorney's fees out of the initial payment, rather than the $75,000 (i.e., 25% of the $300,000 payment) that he could have taken. The other $37,500 of attorney's fees related to the initial payment was "deferred" until payment of the claim bill.

The lobbyist's fees are not included as part of the 25 percent attorney's fee. The lobbyist's fees are an additional 5 percent, which is $50,000 of the $1 million claim.

The Legislature is free to limit the fees and costs paid in connection with a claim bill as it sees fit. Gamble v. Wells, supra. The bill does so by stating that "[t]he total amount paid for attorney's fees, lobbying fees, costs and other similar

expenses relating to this claim may not exceed 25 percent of the amount awarded [by the bill]."

If this language remains in the bill, Franklin's parents will receive a total of $750,000. The remaining $250,000 will go to attorney's fees and lobbyist's fees.

If this language were not in the bill, Franklin's parents would receive $662,500. The claimants' attorney would receive $287,500 (i.e., $37,500 in fees "deferred" from the initial payment plus $250,000 in fees related to the claim bill) and the lobbyist would receive $50,000.

OTHER ISSUES: The bill should be amended to clarify that the payment to Franklin's parents will go to their special needs trust, as required by the court order approving the settlement agreement.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 30 be reported FAVORABLY, as amended.

Respectfully submitted,

T. Kent Wetherell
Senate Special Master

cc: Senator Al Lawson
Representative Matthew Meadows
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Counsel of Record

By the Committee on Judiciary; and Senators Gibson and Bracy

590-01951-17 201750c1

A bill to be entitled

An act for the relief of Eddie Weekley and Charlotte Williams, individually and as co-personal representatives of the Estate of Franklin Weekley, their deceased son, for the disappearance and death of their son while he was in the care of the Marianna Sunland Center, currently operated by the Agency for Persons with Disabilities; providing an appropriation to compensate them for the disappearance and death of Franklin Weekley, which were due to the negligence of the Department of Children and Families; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, in November of 2001, Franklin Weekley was diagnosed with mental retardation and a seizure disorder and was admitted to the Marianna Sunland Center, which at the time was operated by the Department of Children and Family Services, now known as Department of Children and Families, and

WHEREAS, on December 6, 2002, Franklin Weekley disappeared from the center and, following a search of the premises by employees of the center, was deemed by the center to have run away, and the case was closed, and

WHEREAS, on October 28, 2004, a demolition crew found the skeletal remains of Franklin Weekley in the basement of a building adjacent to the premises of the Marianna Sunland Center where Franklin had resided, and

WHEREAS, legal action was filed on behalf of Franklin Weekly's parents against the Department of Children and Family

590-01951-17 201750c1

Services and its employees or agents raising negligence, tort, statutory, and civil rights claims concerning the disappearance and death of their son, and

WHEREAS, the parties and the Agency for Persons with Disabilities, which currently operates the Marianna Sunland Center, mediated and reached a settlement of all claims, and

WHEREAS, the plaintiffs and the Agency for Persons with Disabilities entered into a compromise and settlement agreement in which they agreed to a claim bill under which the agency will pay $1 million in addition to the $300,000 it previously paid to settle claims arising out of this matter, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $1 million is appropriated from the General Revenue Fund to the Agency for Persons with Disabilities, as successor to the Department of Children and Family Services, to be paid for the relief of Eddie Weekley and Charlotte Williams, individually and as co-personal representatives of the Estate of Franklin Weekley, deceased.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of Eddie Weekley and Charlotte Williams, individually and as co-personal representatives of the Estate of Franklin Weekley, deceased, in the sum of $1 million upon funds of the Agency for Persons with Disabilities in the State Treasury, and to pay the same out of such funds in the State Treasury. Pursuant to the settlement agreement approved by the

court in August 2007, the funds are to be paid into a Medicaid-compliant special needs trust account established on behalf of Eddie Weekley and Charlotte Williams.

Section 4. The amount paid by the Agency for Persons with Disabilities pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act resulting in the disappearance and death of Franklin Weekley. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 5. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Judiciary
Regulated Industries
Joint Legislative Auditing Committee

April 18, 2017

Senator Jack Latvala, Chair
Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Latvala:

I respectfully request that SB 50, relating to Franklin Weekley's mysterious disappearance on December 6, 2002 and subsequent discovery of his death while in the State's care and custody, be placed on the next committee agenda.

SB 50, requires $1,000,000.00 to be paid upon approval of a claims bill after mediation took place on June 20, 2007, which resulted in a settlement of $1,300,000.00. $300,000.00 of it to be paid up front and. In addition, the Governor and the State agreed to support the claims bill process. Moreover, Governor Crist issued an Order requiring the FDLE to launch a full-scale criminal investigation surrounding Franklin's disappearance and death. This bill passed unanimously in the previous committees.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904)359-2553
405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

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/CS/SB 1012
INTRODUCER:	Appropriations Committee; Banking and Insurance Committee; and Senators Brandes and Young
SUBJECT:	Insurer Anti-fraud Efforts
DATE:	April 27, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AGG	**Recommend: Favorable**
3.	Sanders	Hansen	AP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1012 creates new requirements for insurance companies relating to insurance fraud prevention and reporting. The bill requires all insurers to adopt an anti-fraud plan and to establish and maintain a unit within the company to investigate possible fraudulent insurance acts or contract with others to investigate fraudulent insurance acts. The insurer must electronically file with the Department of Financial Services (DFS) a detailed description of the unit established to investigate possible fraudulent insurance acts or a copy of the contract with the company that investigates fraudulent insurance acts for the insurer and a copy of the anti-fraud plan. This filing must be made annually on or before December 1, starting in 2017.

The anti-fraud plan must include:

- An acknowledgment that the insurer has established procedures for detecting possible fraudulent insurance acts;
- An acknowledgement that the insurer has established procedures for reporting such acts to the DFS;
- An acknowledgement that the insurer provides required anti-fraud education to employees;
- A description of the anti-fraud education;
- A description of the insurer's anti-fraud unit; and
- The rationale for staffing levels and resources provided to the anti-fraud unit.

Beginning in 2019, the bill requires every insurer to annually submit anti-fraud statistics to the DFS by March 1 for the lines of business written by that insurer for the calendar year. The statistics must include:

- The number of policies in effect;
- The amount of premiums written for policies;
- The number of claims received;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;
- The number of cases referred to the DFS;
- The number of cases referred to other law enforcement agencies;
- The number of cases referred to other entities; and
- The estimated dollar amount of damages in cases referred to the DFS or other agencies.

Current law only requires statistical reporting from workers' compensation insurers. This bill requires all insurers to provide reports.

The bill modifies reporting requirements for workers' compensation insurers.

The bill creates a dedicated prosecutor program administered by the DFS. The DFS does not anticipate an impact to any state revenues or expenditures.[1] The program will allow state attorneys to seek grants from the DFS, subject to funding by the Legislature, to add positions to prosecute insurance fraud cases.

The bill 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

[1] Email from Elizabeth Boyd, Legislative Affairs Director (April 7, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

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.

Allows motor vehicle insurers an exemption from the requirement that they inspect each private passenger motor vehicle before issuing an insurance policy that provides coverage for physical damage. The inspection requirement only applies in counties with a 1988 population of 500,000 or greater. The bill requires insurers using the exemption to file a manual rule with the Office of Insurance Regulation (OIR) and allows an insurer to file with the OIR their own preinsurance inspection requirements before insuring a private passenger motor vehicle.

Except as otherwise provided, the bill takes effect upon becoming a law.

II. Present Situation:

The Department of Financial Services (DFS) regulates insurance agents, insurance agencies, and insurance adjusters. The DFS' Division of Investigative and Forensic Services (division) contains sworn law enforcement officers that investigate various types of insurance fraud including personal injury protection (PIP) fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud. Florida statutes direct the division to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act, false and fraudulent insurance claims, and willful violations of the Florida Insurance Code and rules adopted pursuant to the code. The division employs sworn law enforcement officers to investigate insurance fraud and other matters within the division's jurisdiction. In Fiscal Year 2014-2015, the division received 17,392 referrals.[2]

Insurance Fraud

According to the Insurance Information Institute (III), insurance fraud is

> … a deliberate deception perpetrated against or by an insurance company or agent for the purpose of financial gain. Fraud may be committed at different points in the insurance transaction by applicants for insurance,

[2] http://www.fldfs.com/Division/DIFS/resources/documents/2014-15_Annual-Report.pdf (last accessed March 29, 2017).

> policyholders, third-party claimants, or professionals who provide services to claimants. Insurance agents and company employees may also commit insurance fraud. Common frauds include "padding," or inflating actual claims, misrepresenting facts on an insurance application, submitting claims for injuries or damage that never occurred, and "staging" accidents.[3]

The III further states that:

> Insurance fraud may be classified as "hard" or "soft." Hard fraud is a deliberate attempt either to stage or invent an accident, injury, theft, arson, or other type of loss that would be covered under an insurance policy. Soft fraud, which is sometimes called opportunity fraud, occurs when a policyholder or claimant exaggerates a legitimate claim. Soft fraud may also occur when people purposely provide false information to influence the underwriting process in their favor when applying for insurance.[4]

According to the National Insurance Crime Bureau[5] (NICB), questionable insurance claims rose from 100,201 in 2011 to 116,171 in 2012; which is a 16 percent increase.[6] Furthermore, fraud is the second most costly white-collar crime in America behind tax evasion.[7] According to the NICB, fraud leads to higher insurance rates, causes taxes to rise, and inflates prices for consumer goods.[8]

The Federal Bureau of Investigation estimates the total cost of insurance fraud, excluding health insurance fraud, at more than $40 billion per year. Insurance fraud costs the average U.S. family between $400 and $700 per year in the form of increased premiums.[9]

Anti-Fraud Requirements Imposed on Insurance Companies

Section 626.9891, F.S., requires each insurer admitted to do business in this state, if the insurer received $10 million or more in direct premiums during the previous calendar year, to establish a unit to investigate possible insurance claim fraud or to contract with others to investigate such fraud. The insurer must file a detailed description of the anti-fraud unit, or provide a copy of the contract, to the division.[10]

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[3] Insurance Information Institute, *Fraud*, http://www.iii.org/fact-statistic/fraud (last visited April 11, 2017).
[4] *Id*.
[5] The National Insurance Crime Bureau (NICB) is a not-for-profit organization that receives support from nearly 1,100 property and casualty insurance companies and self-insured organizations. The NICB partners with insurers and law enforcement agencies to facilitate the identification, detection and prosecution of insurance criminals. https://www.nicb.org/about-nicb (last visited April 11, 2017).
[6] Insurance Information Institute, *Fraud*, http://www.iii.org/fact-statistic/fraud (last visited April 11, 2017).
[7] The NICB, Insurance Fraud: Understanding the Basics, https://www.nicb.org/theft_and_fraud_awareness/fact_sheets (last visited April 12, 2017).
[8] *Id.*
[9] The Federal Bureau of Investigation, Insurance Fraud, https://www.fbi.gov/stats-services/publications/insurance-fraud (last visited April 11, 2017).
[10] Section 626.9891(1), F.S.

If the insurer received less than $10 million in direct premiums during the previous calendar year, the insurer must submit an anti-fraud plan to the division.[11] The anti-fraud plan must describe:

- A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts;
- A description of the insurer's procedures for the mandatory reporting of possible fraudulent insurance acts to the division;
- A description of the insurer's plan for anti-fraud education and training of its claims adjusters or other personnel; and
- A written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts.[12]

Workers' compensation insurers are required to report the following to the DFS on or before August 1 of each year:

- The dollar amount of recoveries and losses attributable to workers' compensation fraud delineated by the type of fraud: claimant, employer, provider, agent, or other;
- The number of fraud referrals submitted to the Bureau of Workers' Compensation Fraud for the prior year;
- A description of the organization of its anti-fraud unit, if applicable;
- The rationale for the level of staffing and resources being provided for the anti-fraud unit, which may include the objective criteria such as:
  - Number of policies written;
  - Number of claims received on an annual basis;
  - Volume of suspected fraudulent claims currently being detected; and
  - An assessment of optimal caseload that can be handled by an investigator;
- The in-service anti-fraud education and training provided to personnel; and
- A description of a public awareness program focused on insurance fraud and methods by which the public can prevent it.[13]

If an insurer fails to comply with the requirements for anti-fraud units or anti-fraud plans or fails to comply other provisions of law, the DFS, Office of Insurance Regulation (OIR), or Financial Services Commission may impose certain administrative fines.[14]

Dedicated Prosecutor Program

The Dedicated Prosecutor Program (program) was created in September of 2003 and the first dedicated prosecutor position was jointly funded by the DFS, the Miami-Dade State Attorney's Office, and the Florida Automobile Joint Underwriting Association. As of June 30, 2016, the program has 36 full time positions with 20 dedicated prosecutors located in Jacksonville,

[11] Section 626.9891(2), F.S.
[12] Section 626.9891(3), F.S.
[13] Section 626.9891(6), F.S.
[14] Section 626.9891(7), F.S.

Orlando, Miami-Dade, Tampa, West Palm Beach, Broward, and Ft. Myers. Four positions are devoted solely to workers' compensation fraud.[15]

Current law does not specify requirements for participation in the program. Instead, the program is authorized by proviso language in the General Appropriations Act. The 2016 proviso states "funds may not be used for any purpose other than the funding of attorney and paralegal positions that prosecute crimes of insurance fraud." The DFS indicates that, in the absence of any specific statutory requirement, participating state attorneys' offices submit voluntary, quarterly reports with general caseload data. Through analysis of the reports, the division has found that certain participating state attorney's offices are prosecuting minimal amounts of insurance fraud cases, prosecuting a majority of non-insurance fraud cases, or have had vacant positions for extended periods of time.[16]

Viatical Settlement Contracts - Stranger-Oriented Life Insurance (STOLI)

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.[17] 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 interest[18] 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."[19] 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.[20]

Viatical Settlement Contracts - Background

A viatical settlement contract is a written agreement entered into between the owner[21] of a life insurance policy, referred to as the viator, and a viatical settlement provider wherein the viator

[15] Department of Financial Services, *Analysis of SB 1012* (March 8, 2017) at p. 2.
[16] *Id*.
[17] Office of Insurance Regulation, *Life Insurance*, http://www.floir.com/Sections/LandH/Life/default.aspx (last visited April 14, 2017).
[18] Section 627.404, F.S., lists nine exclusive categories in which an "insurable interest" as to life, health or disability insurance are recognized.
[19] The insurable interest need not exist after the inception date of coverage under the contract. *See* s. 627.404(1), F.S.
[20] Section 627.404(2)(b), F.S.
[21] Or certificateholder if a group policy.

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.[22] 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,[23] 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 expectance. 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.[24]

An example cited by the Office of Insurance Regulation (OIR) of such fraudulent activity was Mutual Benefits Corporation (MBC).[25] 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.

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

[22] Section 626.9911, F.S.
[23] 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).
[24] Office of Insurance Regulation, *Secondary Life Insurance Market Report to the Florida Legislature* (Dec. 2013), p. 9.
[25] *See* Office of Insurance Regulation, *supra* note 5, at pg. 10.

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.[26]

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 Conference of Insurance Legislators (NCOIL)[27] 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)[28] 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.[29]

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 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.[30]

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[26] 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).
[27] 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).
[28] Ch. 96-336, Laws of Fla.
[29] Section 626.9926, F.S.
[30] Sections 626.9911(9) and 626.9916, F.S.

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.[31] 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.[32]

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 is a perversion of the life insurance asset and leads to the moral hazard concerns that insurable interest doctrines were intended to mitigate.[33]

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-

[31] Ch. 2013-40, s. 6, Laws of Fla. (2013 General Appropriations Act, p. 316).
[32] *See* Office of Insurance Regulation, *supra* fn. 5, pp. 50-51.
[33] 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).

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.[34] 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.[35]

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:[36]

- 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.
- Seniors may encounter unexpected tax liability from the sale of the life insurance policy.[37]
- 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.

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[34] AALU, NAIFA, and ACLI, *STOLI: The Problem and the Appropriate State Response*, p. 4, (on file with the Senate Committee on Banking and Insurance).

[35] 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).

[36] 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.

[37] *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.

- 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 NAIC and 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 nationally[38] and in Florida.[39]

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.[40] 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.[41]

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.

The OIR may use several legal, criminal or regulatory remedies to address STOLI transactions:

- *The Viatical Settlement Act* (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.[42]

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[38] OIR, *STOLI Criminal Cases Against Agents May Be on Upswing*, http://www.floir.com/siteDocuments/ACLI17Feb28STOLICriminalCasesAgainstAgentsMayBeUpswing.pdf (February 28, 2012) (last visited April 14, 2017).
[39] For a listing of OIR enforcement actions, see OIR, *Viatical Criminal, Civil and Regulatory Actions*, http://www.floir.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*.
[40] Sections 626.611, 626.6115, 626.6215, and 626.621, F.S.
[41] Section 626.9541, F.S.
[42] Sections 626.9914 and 626.99272, F.S.

- *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.[43]
- *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 violation. In addition, "twisting"[44] and "churning"[45] are first-degree misdemeanors, while willfully submitting false signatures on an application is a third-degree felony.[46] 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.[47]

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,

[43] Sections 626.611, 626.6115, 626.6215, and 626.621, F.S.

[44] 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."

[45] "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.

[46] Section 626.9541, F.S.

[47] OIR Agency Analysis, *supra* note 24, at 2.

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.[48] 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][49] 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 Circuit certified questions to the Florida Supreme Court for a determination of Florida law on the conflict between these two statutes.[50]
- 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."[51] 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?"[52] 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."[53]

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires insurers to perform preinsurance inspections of private passenger motor vehicles. The inspection must include:

- Taking a physical imprint of the vehicle's vehicle identification number or otherwise recording the vehicle identification number in a manner prescribed by the Financial Services Commission (the commission).
- Recording the presence of accessories required by the commission to be recorded.
- Recording the locations of and a description of existing damage to the vehicle.

The requirement applies to a policy issued on a private passenger motor vehicle principally garaged in counties with a 1988 population of 500,000 or greater. These counties are Duval, Palm Beach, Broward, Dade, Orange, Hillsborough, and Pinellas. There are various exemptions from the required preinsurance inspection, including exceptions for:

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[48] *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).
[49] BLACKS LAW DICTIONARY, http://thelawdictionary.org/article/ab-initio-big-deal-contract-law/ (last visited April 13, 2017).
[50] *Pruco Life Ins. Co. v. Wells Fargo Bank, N.A.*, 780 F.3d 1327 at 1336 (11th Cir. C.A. 2015).
[51] *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.
[52] *Id.* at 1206-07.
[53] *Id*. at 1203.

- New, unused motor vehicles purchased or leased from a licensed motor vehicle dealer or leasing company;[54]
- Vehicles added by policyholders continuously insured for two or more years;
- Temporary substitute motor vehicles;
- Motor vehicles leased for less than six months, contingent upon certain documentation
- Vehicles ten years old or older;
- Renewal policies;
- Vehicles or policies exempted by rule of the commission;
- Vehicles garaged too far from a contracted inspection facility;
- Vehicles on a commercial rated policy with five or more insured vehicles;
- When an insurance producer transferring a book of business from one insurer to another; and
- When an individual insured's coverage is being transferred and initiated by a producer to a new insurer.

Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Physical damage coverage may not be suspended during the policy period due to the applicant's failure to provide the required documents. However, claim payments are conditioned upon, and are not payable until, the required documents are received by the insurer. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed $5.[55]

In 2016, the Legislature required the Department of Financial Services (DFS) to provide a report on preinsurance inspections in the state.[56] The report was issued on December 22, 2016.[57] The required elements and reported data[58] for 2012-2016 are:

- Total cost incurred by insurers and policyholders in order to comply with the inspections.
  - Insurers: $12,062,089
  - Policyholders: None
- Total cost incurred by insurers to have motor vehicles inspected.
  - $12,062,089
- Total premium savings for policyholders as a result of the inspections.
  - $35,640
- Total number of inspected motor vehicles that had preexisting damage.
  - 125,787 motor vehicles inspected.
- Data on potential fraud within the first 125 days after issuance of a new policy.
  - 6,166 potential fraud claims.
- Total number of referrals to the NICB by preinsurance inspectors during the past five years.

[54] The insurer may require a bill of sale, buyer's order, or lease agreement, or copy of title or registration that establishes transfer of ownership from the dealer or leasing company and the window sticker. See s. 627.744(2)(b), F.S.
[55] Section 627.744(4), F.S.
[56] Chapter 2016-133, L.O.F.
[57] FLORIDA DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF INVESTIGATIVE & FORENSIC SERVICES, s. *627.744(8)(a), F.S. Motor Vehicle Pre-Inspection – Reporting Requirements* (Dec. 22, 2016). (on file with the Senate Committee on Banking and Insurance.)
[58] The survey and data request summarized in the report included responses received from 157 insurers (39 provided data).

- 626 referrals made to NICB.[59]

Many insurers argue based on the findings of this report that the mandatory cost for such inspections does not justify the potential cost avoidance. However, vendors that provide these mandatory inspections argue, when taking into account the average cost of repair to vehicles along with the number of vehicles noted as having damage at time of inspection, the total cost avoidance from potential fraud should be much higher than what has been reported.

III. Effect of Proposed Changes:

Anti-Fraud Requirements Imposed on Insurance Companies (Section 1)

Section 1 amends s. 626.9891, F.S., to create more uniform requirements for insurers to create anti-fraud units and anti-fraud plans than those that exist in current law. This section requires every insurer to designate at least one employee responsible for meeting the requirements of s. 626.9891, F.S. As an administrative expense for ratemaking purposes, insurers must include the additional cost incurred in creating an anti-fraud unit, hiring additional employees, or the cost of contracting with another entity to fulfill the requirements of this act.

"Anti-fraud investigative unit," as used in this section, means the designated anti-fraud unit or division, or contractor authorized to investigate and report possible fraudulent insurance acts by insureds or by persons making claims for services or repairs against policies held by insureds.

This section requires all insurers to establish and maintain a designated anti-fraud unit or alternatively, to contract with others to investigate and report possible fraudulent insurance acts by insureds or by persons making claims for services or repairs against policies held by insureds.

Additionally, under this section, insurers are required to adopt an anti-fraud plan. The anti-fraud plan must include:

- An acknowledgement that the insurer has established procedures for detecting and investigating possible fraudulent insurance acts relating to the different types of insurance written by that insurer;
- An acknowledgment that the insurer has established procedures for the mandatory reporting of possible fraudulent insurance acts to the division;
- An acknowledgment that the insurer provides the required anti-fraud education and training to the anti-fraud unit;
- A description of the required anti-fraud education and training;
- A description or chart of the insurer's anti-fraud investigative unit including position titles and descriptions of staffing; and
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria, such as:
  - The number of policies written;
  - The number of claims received on an annual basis;
  - The volume of suspected fraudulent claims detected on an annual basis; and

[59] DFS also reports that 4,065 referrals were made by insurers to the Division of Investigative & Forensic Services (formerly the Division of Insurance Fraud) during the same period.

- An assessment of the optimal caseload that one investigator can handle on an annual basis.

Insurers must establish the anti-fraud units and anti-fraud plans (or enter into an appropriate contract) by December 31, 2017. Furthermore, the insurer must electronically file with the Department of Financial Services (DFS), on an annual basis, the anti-fraud plan or executed contract together with the name of the employee designated as responsible for implementing the requirements of this act.

This section requires every insurer to provide at least two hours of initial anti-fraud training to the designated anti-fraud investigative unit or contractor by December 31, 2018. Each insurer must also provide an annual one-hour refresher course that addresses detection, referral, investigation, and reporting of suspected insurance fraud for the types of insurance lines written by the insurer.

This section requires every insurer to submit anti-fraud statistics by March 1, 2019, and annually thereafter, for the lines of business written by that insurer for the prior calendar year. The statistics must include:

- The number of policies in effect;
- The amount of premiums written for policies;
- The number of claims received;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;
- The number of cases referred to the Division of Investigative and Forensic Services (division);
- The number of cases referred to other law enforcement agencies;
- The number of cases referred to other entities; and
- The estimated dollar amount of damages in cases referred to the division, or other agencies.

Current law only requires statistical reporting from workers' compensation insurers. This section requires all insurers to provide reports by March 1, 2019, and annually thereafter. The bill requires the DFS to adopt rules to administer the reporting requirements of the bill.

This section also requires workers' compensation insurers to report the following information each year:

- The estimated dollar amount of losses attributable to workers' compensation fraud delineated by the type of fraud, including: claimant, employer, provider, agent, or other type;
- The estimated dollar amount of recoveries attributable to workers' compensation fraud delineated by the type of fraud, including: claimant, employer, provider, agent, or other type; and
- The number of cases referred to the division, delineated by the type of fraud, including: claimant, employer, provider, agent, or other type;

This section provides that an insurer who obtains a certificate of authority has six months to establish the anti-fraud unit or enter into an appropriate contract. During the same six months, the insurer must adopt an anti-fraud plan and must designate an employee responsible for complying with s. 626.9891, F.S. The section further provides that the insurer has one calendar year thereafter, to file the anti-fraud plan with the DFS and comply with relevant reporting requirements. Administrative fines may be assessed if an insurer fails to comply with s. 626.9891, F.S.

The bill requires the division to create a report detailing best practices for the detection, investigation, prevention, and reporting of insurance fraud and other fraudulent insurance acts. The report must be completed by December 31, 2018, and must be updated as necessary but at least every two years. The report must provide:

- Information on the best practices for the establishment of anti-fraud investigative units within insurers;
- Information on the best practices and methods for detecting and investigating insurance fraud and other fraudulent insurance acts;
- Information on appropriate anti-fraud education and training of insurer personnel;
- Information on the best practices for reporting insurance fraud and other fraudulent insurance acts to the division and to other law enforcement agencies;
- Information regarding the appropriate level of staffing and resources for anti-fraud investigative units within insurers;
- Information detailing statistics and data relating to insurance fraud which insurers should maintain; and
- Other information as determined by the division.

Dedicated Prosecutor Program (Section 2)

Section 2 creates s. 626.9896, F.S., to create the Insurance Fraud Dedicated Prosecutor Program (program).

Legislative Intent

This section provides legislative intent to address the increasing problem of insurance fraud, the need to adequately investigate and prosecute insurance fraud and the need to create a program dedicated to the prosecution of insurance fraud. The Legislature recognizes the division can efficiently and effectively monitor the program, can direct and reallocate resources as insurance trends change and demand for prosecutorial resources shift between judicial circuits.

Purpose of the Program

This section creates a grant program within the DFS to fund the program. The purpose of the program is to provide grants to state attorneys' offices to fund attorney and paralegal positions for the exclusive prosecution of insurance fraud. The program will consist only of funds appropriated specifically for the program.

Grant Applications

Beginning in 2018, a state attorney's office seeking grant funds must submit an application to the division detailing the proposed number of dedicated prosecutors and paralegals requested for the prosecution of insurance fraud. Applications must be received by July 1 of each even-numbered year and shall identify funding needs for two years. Grant awards are contingent upon legislative appropriation and subject to renewal by the DFS. The division is required to compile and review the timely submitted applications to establish its legislative budget request for the program for the upcoming two years.

Award of Grants

The section authorizes the division to award grants to state attorneys' offices using a formula adopted by rule. The rule must be based on metrics and data compiled by the division that allocates funds to the judicial circuits based on trends in insurance fraud and the performance and output measures reported to the division. A grant is subject to s. 215.971, F.S., and may only be used to fund attorney and paralegal positions that are dedicated exclusively to the prosecution of insurance fraud. The division shall establish the annual maximum grant amount based on funds appropriated to the DFS for funding the program.

Reporting

The section requires the division to track and report on the effectiveness and efficiency of each state attorney's office's use of the awarded grant funds. To help complete the report, each state attorney's office that is awarded a grant must submit performance and output information to the division. The report must be provided to the Executive Office of the Governor, the Speaker of the House of Representatives, and the President of the Senate by September 1, 2020, and annually thereafter. The report must include, but is not limited to, the following:

- The amount of grant funds received and expended by each state attorney's office;
- A description of the purposes for which the funds were expended, including payment of salaries, expenses, and any other costs needed to support the delivery of services; and
- The results achieved from the expenditures made, including the number of complaints filed, the number of investigations initiated, the number of arrests made, the number of convictions, and the amount of restitution or fines paid as a result of the cases presented for prosecution.

Rules

The section provides that the DFS may adopt rules for the administration and implementation of the program, including procedures, forms, formulas and standards.

Viatical Settlement Agreements – Stranger- Oriented Life Insurance (STOLI) (Sections 3-10)

Defining a "Fraudulent Viatical Settlement Act" and a "Stranger-originated Life Insurance Practice" (Section 3)

Section 3 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;[60]
- 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;
- 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

[60] 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.

benefit of a third party investor who has no insurable interest in the insured at policy origination.[61]

Contestability Periods for Viaticated Policies and Stranger-Originated Life Insurance (Sections 4, 7 and 9)

Section 4 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 7 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.[62] 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.[63] There must not be an agreement or understanding with another person to

[61] 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.

[62] 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.

[63] May include the net surrender value of the life insurance policy being financed.

guarantee any liabilities related to the policy or to purchase the policy. Neither the insured nor policy were evaluated for settlement.

Section 9 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 6 and 8)

Section 6 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)F.S., 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.[64]

Section 8 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 10)

Section 10 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 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 (Section 5)

Section 5 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.

[64] Section 626.99275(2), F.S.

Preinsurance Inspection (Section 11)

Section 11 allows motor vehicle insurers to opt out of the requirement that they inspect each private passenger motor vehicle before issuing an insurance policy that provides coverage for physical damage, including collision and comprehensive coverages.

An insurer who elects to opt out of inspection requirements must file a manual rule with the OIR indicating it will not participate in the inspection program under s. 627.744, F.S. The insurer may establish its own preinsurance inspection requirements as a condition to issuing a private passenger motor vehicle insurance policy, and such requirements must be included in the manual rule filed with the OIR. Insurers may not charge applicants for the cost of an inspection if the insurer has opted out of the inspection requirements under s. 627.744, F.S.

Other Provisions (Sections 12 and 13)

Section 12 amends s. 641.3915, F.S., to make technical changes.

Section 13 provides that except as otherwise provided in this act, the bill 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:

Anti-Fraud Efforts

The fiscal impact is indeterminate. However, insurance companies may incur cost associated with implementing the provisions of this act. In addition, insurance companies may incur some costs compiling and providing statistical data to the Department of Financial Services (DFS).

Viatical Settlement Agreements – Stranger-Oriented Life Insurance (STOLI)

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 DFS anticipates no fiscal impact on state revenues or expenditures.[65] The DFS may experience minimal costs associated with rulemaking; however, those costs can be absorbed within existing resources.

The Justice Administrative Commission indicates the bill will have an indeterminate fiscal and policy impact, as the administrative needs of the Offices of the State Attorney, associated with the creation of the program, are not predictable at this time.[66]

VI. Technical Deficiencies:

Section 3 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 452-455 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 454-455 is unnecessary.

Section 10 of the bill requires insurers to provide a notice to policyholders considering making changes in the status of a life insurance policy. On line 652, 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: 626.9891, 626.9911, 626.9924, 626.99245, 626.99275, 626.99287, and 641.3915.

This bill creates the following sections of the Florida Statutes: 626.9896, 626.99289, 626.99291, 626.99292, and 627.744.

[65] Email from Elizabeth Boyd, Legislative Affairs Director, Department of Financial Services (April 7, 2017) (on file with Senate Appropriations Subcommittee on General Government).
[66] Justice Administrative Commission, *Senate Bill 1012 Fiscal Analysis* (February 23, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

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 25, 2017:
The committee substitute:

- Defines the terms "fraudulent viatical settlement agreements" and "stranger-oriented life insurance."
- Requires viatical settlement providers to provide required documents to the life insurer within 20-days of an agreement to viaticate the policy during the five-year contestability period.
- Makes the viatical settlement agreement, entered within five years of issuance, void and unenforceable if the policy is subject to a loan directly or indirectly by an interest with the policy.
- Revises conditions allowing viatication during the contestability period.
- Allows viatication under certain conditions.
- Allows a life insurer to contest a life insurance policy obtained by a STOLI practice under certain conditions.
- Adds the following 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.
  - Engaging in a stranger-originated life insurance practice, as defined 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.
- Requires a life insurer to provide a statement to policyholders advising the policyholder to consult with a licensed insurance or financial advisor and provides contact information for the Office of Insurance Regulation in the event the policyholder is considering policy changes.
- Corrects a cross-reference.
- Allows motor vehicle insurers to opt out of the requirement to inspect each private passenger motor vehicle before issuing a physical damage policy.
- Allows insurers to establish their own preinsurance inspection requirements prior to issuing a private passenger motor vehicle insurance policy.
- Requires insurers who opt out of the inspection requirements to:
  - File a manual rule with the OIR indicating its non-participation.
  - Provide preinsurance inspection requirements established by the insurer to be included in the manual rule filing.

- Provides that insurers may not charge applicants for the cost of an inspection if the insurer has opted out of the inspection requirements under s. 627.744, F.S.
- Provides unless otherwise expressed, the bill is effective upon becoming a law.

CS by Banking and Insurance on April 3, 2017:

- Removes a provision related to the reversion of funds from the Justice Administrative Commission to the Workers' Compensation Trust Fund.
- Requires all insurers, regardless of the amount of premium written, to submit anti-fraud plans (or contracts) to the DFS. It modifies insurer reporting requirements.
- Requires a report to the Governor, President, and Speaker regarding the effectiveness of the dedicated prosecutor program.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
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	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 41 - 308
and insert:
Section 1. Effective September 1, 2017, section 626.9891, Florida Statutes, is reordered and amended to read:
626.9891 Insurer anti-fraud investigative units; reporting requirements; penalties for noncompliance.—
(1)~~(5)~~ As used in ~~For purposes of~~ this section, the term:
(a) "Anti-fraud investigative unit" means the designated

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anti-fraud unit or division, or contractor authorized under subparagraph (2)(a)2.

(b) "Designated anti-fraud unit or division" includes a distinct unit or division or a unit or division made up of ~~the assignment of fraud investigation to~~ employees whose principal responsibilities are the investigation and disposition of claims who are also assigned investigation of fraud. ~~If an insurer creates a distinct unit or division, hires additional employees, or contracts with another entity to fulfill the requirements of this section, the additional cost incurred must be included as an administrative expense for ratemaking purposes.~~

(2)~~(1)~~ By December 31, 2017, every insurer admitted to do business in this state ~~who in the previous calendar year, at any time during that year, had $10 million or more in direct premiums written~~ shall:

(a)1. Establish and maintain a designated anti-fraud unit or division within the company to investigate and report possible fraudulent insurance acts ~~claims~~ by insureds or by persons making claims for services or repairs against policies held by insureds; or

2.~~(b)~~ Contract with others to investigate and report possible fraudulent insurance acts by insureds or by persons making claims for services or repairs against policies held by insureds.

(b) Adopt an anti-fraud plan.

(c) Designate at least one employee with primary responsibility for implementing the requirements of this section.

(d) Electronically ~~An insurer subject to this subsection~~

~~shall~~ file with the Division of Investigative and Forensic Services of the department, and annually thereafter ~~on or before July 1, 1996~~, a detailed description of the designated anti-fraud unit or division ~~established pursuant to paragraph (a)~~ or a copy of the contract executed under subparagraph (a)2., as applicable, a copy of the anti-fraud plan, and the name of the employee designated under paragraph (c) ~~and related documents required by paragraph (b)~~.

An insurer must include the additional cost incurred in creating a distinct unit or division, hiring additional employees, or contracting with another entity to fulfill the requirements of this section, as an administrative expense for ratemaking purposes.

~~(2) Every insurer admitted to do business in this state, which in the previous calendar year had less than $10 million in direct premiums written, must adopt an anti-fraud plan and file it with the Division of Investigative and Forensic Services of the department on or before July 1, 1996. An insurer may, in lieu of adopting and filing an anti-fraud plan, comply with the provisions of subsection (1).~~

(3) Each ~~insurers~~ anti-fraud plan must ~~plans shall~~ include:

(a) An acknowledgement that the insurer has established procedures for detecting and investigating possible fraudulent insurance acts relating to the different types of insurance by that insurer ~~A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts~~;

(b) An acknowledgment that the insurer has established ~~A description of the insurer's~~ procedures for the mandatory

reporting of possible fraudulent insurance acts to the Division of Investigative and Forensic Services of the department;

(c) An acknowledgement that the insurer provides the ~~A description of the insurer's plan for~~ anti-fraud education and training required by this section to the anti-fraud investigative unit ~~of its claims adjusters or other personnel~~; ~~and~~

(d) A description of the required anti-fraud education and training;

(e) A ~~written~~ description or chart ~~outlining~~ ~~the organizational arrangement~~ of the insurer's anti-fraud investigative unit, including the position titles and descriptions of staffing; and ~~personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts~~

(f) The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors.

(4) By December 31, 2018, each insurer shall provide staff of the anti-fraud investigative unit at least 2 hours of initial anti-fraud training that is designed to assist in identifying and evaluating instances of suspected fraudulent insurance acts in underwriting or claims activities. Annually thereafter, an insurer shall provide such employees a 1-hour course that addresses detection, referral, investigation, and reporting of

possible fraudulent insurance acts for the types of insurance lines written by the insurer.

(5) Each insurer is required to report data related to fraud for each line of insurance written by the insurer during the prior calendar year. The data shall be reported to the department by March 1, 2019, and annually thereafter, and must include, at a minimum:

(a) The number of policies in effect;

(b) The amount of premiums written for policies;

(c) The number of claims received;

(d) The number of claims referred to the anti-fraud investigative unit;

(e) The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;

(f) The number of claims investigated or accepted by the anti-fraud investigative unit;

(g) The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;

(h) The number of cases referred to the Division of Investigative and Forensic Services;

(i) The number of cases referred to other law enforcement agencies;

(j) The number of cases referred to other entities; and

(k) The estimated dollar amount or range of damages on cases referred to the Division of Investigative and Forensic Services or other agencies.

(6) In addition to providing information required under subsections (2), (4), and (5), each insurer writing workers'

compensation insurance shall also report the following information to the department, on or before March 1, 2019, and annually thereafter ~~August 1 of each year, on its experience in implementing and maintaining an anti-fraud investigative unit or an anti-fraud plan. The report must include, at a minimum~~:

(a) The estimated dollar amount of losses attributable to workers' compensation fraud delineated by the type of fraud, including claimant, employer, provider, agent, or other type.

(b) The estimated dollar amount of recoveries attributable to workers' compensation fraud delineated by the type of fraud, including claimant, employer, provider, agent, or other type.

(c) The number of cases referred to the Division of Investigative and Forensic Services, delineated by the type of fraud, including claimant, employer, provider, agent, or other type.

~~(a) The dollar amount of recoveries and losses attributable to workers' compensation fraud delineated by the type of fraud: claimant, employer, provider, agent, or other.~~

~~(b) The number of referrals to the Bureau of Workers' Compensation Fraud for the prior year.~~

~~(c) A description of the organization of the anti-fraud investigative unit, if applicable, including the position titles and descriptions of staffing.~~

~~(d) The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria such as number of policies written, number of claims received on an annual basis, volume of suspected fraudulent claims currently being detected, other factors, and an assessment of optimal caseload that can be~~

~~handled by an investigator on an annual basis.~~

~~(c) The inservice education and training provided to underwriting and claims personnel to assist in identifying and evaluating instances of suspected fraudulent activity in underwriting or claims activities.~~

~~(f) A description of a public awareness program focused on the costs and frequency of insurance fraud and methods by which the public can prevent it~~.

(7)~~(4)~~ An ~~Any~~ insurer who obtains a certificate of authority has 6 ~~after July 1, 1995, shall have 18~~ months in which to comply with subsection (2), and one calendar year thereafter, to comply with subsections (4), (5), and (6) ~~the requirements of this section~~.

(8)~~(7)~~ If an insurer fails ~~to timely submit a final acceptable anti-fraud plan or anti-fraud investigative unit description, fails to implement the provisions of a plan or an anti-fraud investigative unit description,~~ or otherwise refuses to comply with the provisions of this section, the department, office, or commission may:

(a) Impose an administrative fine of not more than $2,000 per day for such failure ~~by an insurer to submit an acceptable anti-fraud plan or anti-fraud investigative unit description,~~ until the department, office, or commission deems the insurer to be in compliance;

(b) Impose an administrative fine for failure by an insurer to implement or follow the provisions of an anti-fraud plan or anti-fraud investigative unit description; or

(c) Impose the provisions of both paragraphs (a) and (b).

(9) On or before December 31, 2018, the Division of

Investigative and Forensic Services shall create a report detailing best practices for the detection, investigation, prevention, and reporting of insurance fraud and other fraudulent insurance acts. The report must be updated as necessary but at least every 2 years. The report must provide:

(a) Information on the best practices for the establishment of anti-fraud investigative units within insurers;

(b) Information on the best practices and methods for detecting and investigating insurance fraud and other fraudulent insurance acts;

(c) Information on appropriate anti-fraud education and training of insurer personnel;

(d) Information on the best practices for reporting insurance fraud and other fraudulent insurance acts to the Division of Investigative and Forensic Services and to other law enforcement agencies;

(e) Information regarding the appropriate level of staffing and resources for anti-fraud investigative units within insurers;

(f) Information detailing statistics and data relating to insurance fraud which insurers should maintain; and

(g) Other information as determined by the Division of Investigative and Forensic Services.

(10) ~~(8)~~ The department may adopt rules to administer this section, except that it shall adopt rules to administer subsection (5).

Section 2. Effective September 1, 2017, section 626.9896, Florida Statutes, is created to read:

626.9896 Insurance Fraud Dedicated Prosecutor Program.—

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(1) LEGISLATIVE INTENT.—The Legislature recognizes the increasing problem of insurance fraud, the need to adequately investigate and prosecute insurance fraud, and the need to create a program dedicated to the prosecution of insurance fraud. The Legislature recognizes that the Division of Investigative and Forensic Services of the department can efficiently and effectively implement and monitor such a program, and can direct and reallocate resources as insurance fraud trends change and demand for prosecutorial resources shift between judicial circuits.

(2) ESTABLISHMENT OF THE INSURANCE FRAUD DEDICATED PROSECUTOR PROGRAM.—There is created within the department a grant program to fund the Insurance Fraud Dedicated Prosecutor Program. The purpose of the program is to provide grants to state attorneys' offices to fund attorney and paralegal positions that are dedicated exclusively to the prosecution of insurance fraud. The program shall consist only of funds appropriated by the state specifically for this program.

(3) GRANT APPLICATIONS.—Beginning in 2018, a state attorney's office seeking grant funds must submit an application to the Division of Investigative and Forensic Services detailing the proposed number of dedicated prosecutors and paralegals requested for the prosecution of insurance fraud. Applications must be received by July 1 of each even-numbered year and shall identify funding needs for 2 years. Grant awards are contingent upon legislative appropriation in the Insurance Regulatory Trust Fund and Workers' Compensation Administration Trust Fund and subject to renewal by the department. The division must compile and review the timely submitted applications to establish its

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legislative budget request for the program for the upcoming two years.

(4) AWARD OF GRANTS.—The division is authorized to award grants to state attorneys' offices using a formula adopted by rule of the department and based on metrics and data compiled by the division which allocate funds to the judicial circuits based on trends in insurance fraud and the performance and output measures reported as required by this section. A grant awarded to a state attorney's office may only be used to fund attorney and paralegal positions that are dedicated exclusively to the prosecution of insurance fraud. Grants are subject to the provisions of s. 215.971. The division shall establish the annual maximum grant amount, based on funds appropriated to the department for funding the Insurance Fraud Dedicated Prosecutor Program.

(5) REPORTING.—The division must track and report on the effectiveness and efficiency of each state attorney's office's use of the awarded grant funds. To help complete the report, each state attorney's office that is awarded a grant under this section must submit performance and output information as determined by the division. The report must be provided to the Executive Office of the Governor, the Speaker of the House of Representatives, and the President of the Senate by September 1, 2020, and annually thereafter. The report must include, but is not limited to, the following:

(a) The amount of grant funds received and expended by each state attorney's office;

(b) A description of the purposes for which the funds were expended, including payment of salaries, expenses, and any other

costs needed to support the delivery of services;

(c) The results achieved from the expenditures made, including the number of complaints filed, the number of investigations initiated, the number of arrests made, the number of convictions, and the amount of restitution or fines paid as a result of the cases presented for prosecution.

(6) RULES.—The department may adopt rules pursuant to ss. 120.536(1) and 120.54 for the administration and implementation of the Insurance Fraud Dedicated Prosecutor Program. Such rules may establish procedures for the Insurance Fraud Dedicated Prosecutor Program, including forms to be used by the state attorney's offices. The department may establish a formula for allocating grant funds, eligibility criteria, renewal requirements, and standards for evaluating the effectiveness and efficiency of expended funds.

Section 3. Present subsections (2) through (7) of section 626.9911, Florida Statutes, are renumbered as subsections (3) through (8), respectively, present subsections (8) through (14) of that section are renumbered as subsections (10) through (16), respectively, and new subsections (2) and (9) are added to that section, to read:

626.9911 Definitions.—As used in this act, the term:

(2) "Fraudulent viatical settlement act" means an act or omission committed by a person who knowingly, or with intent to defraud 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 acts:

(a) Presenting, causing to be presented, or preparing with the knowledge or belief that it will be presented to or by

another person, false or concealed material information as part of, in support of, or concerning a fact material to:

1. An application for the issuance of a viatical settlement contract or a life insurance policy;

2. The underwriting of a viatical settlement contract or a life insurance policy;

3. A claim for payment or benefit pursuant to a viatical settlement contract or a life insurance policy;

4. Premiums paid on a life insurance policy;

5. Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or a life insurance policy;

6. The reinstatement or conversion of a life insurance policy;

7. The solicitation, offer, effectuation, or sale of a viatical settlement contract or a life insurance policy;

8. The issuance of written evidence of a viatical settlement contract or a life insurance policy; or

9. A financing transaction for a viatical settlement contract or life insurance policy.

(b) Employing a plan, financial structure, device, scheme, or artifice relating to viaticated policies for the purpose of perpetrating fraud.

(c) Engaging in a stranger-originated life insurance practice.

(d) 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.

(e) Perpetuating a fraud or preventing the detection of a fraud by:

1. Removing, concealing, altering, destroying, or sequestering from the office the assets or records of a licensee or other person engaged in the business of viatical settlements;

2. Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;

3. Transacting in the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority to transact such business; or

4. Filing with the office or the equivalent chief insurance regulatory official of another jurisdiction a document that contains false information or conceals information about a material fact from the office or other regulatory official.

(f) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or other person engaged in the business of viatical settlements or life insurance.

(g) Entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained based on information that was falsified or concealed for the purpose of defrauding the policy's issuer, viatical settlement provider, or viator.

(h) Facilitating the viator's change of residency state to avoid the provisions of this act.

(i) 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.

(j) Facilitating or causing the transfer of the ownership of an insurance policy covering a Florida resident to a trust with a situs outside this state or to another nonresident entity to avoid the provisions of this act.

(k) 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.

(l) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiring to commit, an act or omission specified in this subsection.

(9) "Stranger-originated life insurance practice" means an act, practice, arrangement, or agreement to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured. Stranger-originated life insurance practices include, but are not limited to:

(a) The purchase of a life insurance policy with resources or guarantees from or through a person who, at the time of such policy's inception, could not lawfully initiate the policy and the execution of a verbal or written arrangement or agreement to directly or indirectly transfer the ownership of such policy or policy benefits to a third party.

(b) The creation of 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.

Section 4. Subsection (7) of section 626.9924, Florida Statutes, is amended to read:

626.9924 Viatical settlement contracts; procedures; rescission.—

(7) At any time during the contestable period, within 20 days after a viator executes documents necessary to transfer rights under an insurance policy or within 20 days of any agreement, option, promise, or any other form of understanding, express or implied, to viaticate the policy, the provider must give notice to the insurer of the policy that the policy has or will become a viaticated policy. The notice must be accompanied by the documents required by s. 626.99287 ~~626.99287(5)(a) in their entirety~~.

Section 5. Subsection (2) of section 626.99245, Florida Statutes, is amended to read:

626.99245 Conflict of regulation of viaticals.—

(2) This section does not affect the requirement of ss. 626.9911(14) ~~626.9911(12)~~ and 626.9912(1) that a viatical settlement provider doing business from this state must obtain a viatical settlement license from the office. As used in this subsection, the term "doing business from this state" includes effectuating viatical settlement contracts from offices in this state, regardless of the state of residence of the viator.

Section 6. Subsection (1) of section 626.99275, Florida Statutes, is amended to read:

626.99275 Prohibited practices; penalties.—

(1) It is unlawful for a ~~any~~ person to:

(a) ~~To~~ Knowingly enter into, broker, or otherwise deal in a

viatical settlement contract the subject of which is a life insurance policy, knowing that the policy was obtained by presenting materially false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy's issuer.

(b) ~~To~~ Knowingly or with the intent to defraud, for the purpose of depriving another of property or for pecuniary gain, issue or use a pattern of false, misleading, or deceptive life expectancies.

(c) ~~To~~ Knowingly engage in any transaction, practice, or course of business intending thereby to avoid the notice requirements of s. 626.9924(7).

(d) ~~To~~ Knowingly or intentionally facilitate the change of state of residency of a viator to avoid the provisions of this chapter.

(e) Knowingly enter into a viatical settlement contract before the application for or issuance of a life insurance policy that is the subject of a viatical settlement contract or 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. 626.99287.

(f) Engage in a fraudulent viatical settlement act, as defined in s. 626.9911.

(g) Knowingly issue, solicit, market, or otherwise promote the purchase of a life insurance policy for the purpose of or with an emphasis on selling the policy to a third party.

(h) Engage in a stranger-originated life insurance practice, as defined in s. 626.9911.

Section 7. Section 626.99287, Florida Statutes, is amended to read:

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.

(2) Except as hereinafter provided, if a viatical settlement policy is subject to a loan secured directly or indirectly by an interest in the policy within a 5-year period commencing on the date of issuance of the policy or certificate, the viatical settlement contract is void and unenforceable by either party.

(3) Notwithstanding the limitations in subsections (1) and (2) ~~this limitation~~, such a viatical settlement contract is not void and unenforceable if the viator provides a sworn affidavit and accompanying independent evidentiary documentation certifying to the viatical settlement provider that one or more of the following conditions were met during the periods applicable to the viaticated policy as stated in subsections (1) or (2):

(a) ~~(1)~~ The policy was issued upon the owner's exercise of conversion rights arising out of a group or term policy, if the total time covered under the prior policy is at least 60 months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, provided the

coverage has been continuous and under the same group sponsorship.~~;~~

(b)~~(2)~~ The owner of the policy is a charitable organization exempt from taxation under 26 U.S.C. s. 501(c)(3).~~;~~

~~(3) The owner of the policy is not a natural person;~~

~~(4) The viatical settlement contract was entered into before July 1, 2000;~~

(c)~~(5)~~ The viator certifies by producing independent evidence to the viatical settlement provider that one or more of the following conditions were ~~have been~~ met ~~within the 2-year period~~:

~~(a)~~1. The viator or insured is terminally or chronically ill ~~diagnosed with an illness or condition that is either:~~

~~a. Catastrophic or life threatening; or~~

~~b. Requires a course of treatment for a period of at least 3 years of long-term care or home health care;~~ and

~~2.~~ the condition was not known to the insured at the time the life insurance contract was entered into;~~.~~

2.~~(b)~~ The viator's spouse dies;

3.~~(c)~~ The viator divorces his or her spouse;

4.~~(d)~~ The viator retires from full-time employment;

5.~~(e)~~ The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;

6.~~(f)~~ The owner of the policy was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;

7.~~(g)~~ A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a

creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator to all or a substantial part of the viator's assets; or

8.~~(h)~~ The viator experiences a significant decrease in income which is unexpected by the viator and which impairs his or her reasonable ability to pay the policy premium.

(d) The viator entered into a viatical settlement contract more than 2 years after the policy's issuance date and, with respect to the policy, at all times before the date that is 2 years after policy issuance, each of the following conditions is met:

1. Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured;

2. There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and

3. Neither the insured or the policy has been evaluated for settlement.

~~If the viatical settlement provider submits to the insurer a copy of the viator's or owner's certification described above, then the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the viatical settlement agreement shall not be void or~~

~~unenforceable by operation of this section. The insurer shall timely respond to such request. Nothing in this section shall prohibit an insurer from exercising its right during the contestability period to contest the validity of any policy on grounds of fraud.~~

Section 8. Section 626.99289, Florida Statutes, is created to read:

626.99289 Void and unenforceable contracts, agreements, arrangements, and transactions.—Notwithstanding s. 627.455, a contract, agreement, arrangement, or transaction, including, but not limited to, a financing agreement or any other arrangement or understanding entered into, whether written or verbal, for the furtherance or aid of a stranger-originated life insurance practice is void and unenforceable.

Section 9. Section 626.99291, Florida Statutes, is created to read:

626.99291 Contestability of life insurance policies.—Notwithstanding s. 627.455, a life insurer may contest a life insurance policy if the policy was obtained by a stranger-originated life insurance practice, as defined in s. 626.9911.

Section 10. Section 626.99292, Florida Statutes, is created to read:

626.99292 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 his or her policy, he or she should consult with a licensed insurance or financial advisor. The statement may accompany or be included in notices or mailings otherwise provided to the

policyholder.

(2) The statement must also advise the policyholder that he or she may contact the office for more information and include a website address or other location or manner by which the policyholder may contact the office.

Section 11. Effective September 1, 2017, section 641.3915, Florida Statutes, is amended to read:

641.3915 Health maintenance organization anti-fraud plans and investigative units.—Each authorized health maintenance organization and applicant for a certificate of authority shall comply with the provisions of ss. 626.989 and 626.9891 as though such organization or applicant were an authorized insurer. ~~For purposes of this section, the reference to the year 1996 in s. 626.9891 means the year 2000 and the reference to the year 1995 means the year 1999.~~

Section 12. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete lines 2 - 37

and insert:

An act relating to insurance fraud; reordering and amending s. 626.9891, F.S.; defining and revising definitions; requiring every insurer to designate at least one primary anti-fraud employee for certain purposes; requiring insurers to adopt an anti-fraud plan; revising insurer requirements in providing anti-fraud information to the Department of Financial

Services; requiring specified information to be filed annually with the department; revising the information to be provided by insurers who write workers' compensation insurance; requiring each insurer to provide annual anti-fraud education and training; requiring insurers who submit an application for a certificate of authority after a specified date to comply with the section; providing penalties for the failure to comply with requirements of the section; requiring the Division of Investigative and Forensic Services of the department to create, by a specified date, a report detailing best practices for the detection, investigation, prevention, and reporting of insurance fraud and other fraudulent insurance acts; requiring such report to be updated at certain intervals; specifying required information in the report; requiring the department to adopt rules relating to insurers' annual reporting of certain data; creating s. 626.9896, F.S.; providing legislative intent; creating a grant program to fund the Insurance Fraud Dedicated Prosecutor Program within the department; requiring moneys that are appropriated for the program be used to fund specific attorney and paralegal positions; specifying procedures to be used by state attorneys' offices when applying for biennial grants; specifying that grants are for 2 years but authorizing the division to renew the grants; specifying procedures to be used by the department in awarding grant funds; requiring the

Division of Investigative and Forensic Services to provide an annual report to the Executive Office of the Governor, the Speaker of the House of Representatives, and the Senate President; specifying information to be contained in the report; authorizing the department to adopt rules to administer and implement the insurance fraud dedicated prosecutor program; amending s. 626.9911, F.S.; defining the terms "fraudulent viatical settlement act" and "stranger-originated life insurance practice" for purposes of provisions relating to the Viatical Settlement Act; amending ss. 626.9924 and 626.99245, F.S.; conforming cross-references; amending s. 626.99275, F.S.; providing additional prohibited acts related to viatical settlement contracts; amending s. 626.99287, F.S.; providing that a viatical settlement contract is void and unenforceable by either party if the viatical settlement policy is subject, within a specified timeframe, to a loan secured by an interest in the policy; revising conditions and requirements in which viatical settlement contracts entered into within specified timeframes are valid and enforceable; deleting provisions related to the transfer of insurance policies or certificates to viatical settlement providers; creating s. 626.99289, F.S.; providing that certain contracts, agreements, arrangements, or transactions relating to stranger-originated life insurance practices are void and unenforceable; creating s. 626.99291, F.S.;

167518

authorizing a life insurer to contest policies obtained through such practices; creating s. 626.99292, F.S.; requiring life insurers to provide a specified statement to individual life insurance policyholders; authorizing such statements to accompany or be included in notices or mailings provided to the policyholders; requiring such statements to include contact information; amending s. 641.3915, F.S.; deleting obsolete provisions; providing effective dates.

311138

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment to Amendment (167518)

Delete line 101
and insert:
fraud for each identified line of business written by the insurer during

589252

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2017	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment to Amendment (167518) (with title amendment)

Between lines 566 and 567
insert:

Section 11. Effective January 1, 2019, section 627.744, Florida Statutes, is amended to read:

627.744 ~~Required~~ Preinsurance inspection of private passenger motor vehicles.—

(1) A private passenger motor vehicle insurance policy

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providing physical damage coverage, including collision or comprehensive coverage, may not be issued in this state unless the insurer has inspected the motor vehicle in accordance with this section.

(2) This section does not apply:

(a) To a policy for a policyholder who has been insured for 2 years or longer, without interruption, under a private passenger motor vehicle policy that provides physical damage coverage for any vehicle if the agent of the insurer verifies the previous coverage.

(b) To a new, unused motor vehicle purchased or leased from a licensed motor vehicle dealer or leasing company. The insurer may require:

1. A bill of sale, buyer’s order, or lease agreement that contains a full description of the motor vehicle; or

2. A copy of the title or registration that establishes transfer of ownership from the dealer or leasing company to the customer and a copy of the window sticker.

For the purposes of this paragraph, the physical damage coverage on the motor vehicle may not be suspended during the term of the policy due to the applicant’s failure to provide or the insurer’s option not to require the documents. However, if the insurer requires a document under this paragraph at the time the policy is issued, payment of a claim may be conditioned upon the receipt by the insurer of the required documents, and no physical damage loss occurring after the effective date of the coverage may be payable until the documents are provided to the insurer.


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(c) To a temporary substitute motor vehicle.

(d) To a motor vehicle which is leased for less than 6 months, if the insurer receives the lease or rental agreement containing a description of the leased motor vehicle, including its condition. Payment of a physical damage claim is conditioned upon receipt of the lease or rental agreement.

(e) To a vehicle that is 10 years old or older, as determined by reference to the model year.

(f) To any renewal policy.

(g) To a motor vehicle policy issued in a county with a 1988 estimated population of less than 500,000.

(h) To any other vehicle or policy exempted by rule of the commission. The commission may base a rule under this paragraph only on a determination that the likelihood of a fraudulent physical damage claim is remote or that the inspection would cause a serious hardship to the insurer or the applicant.

(i) When the insurer’s authorized inspection service has no inspection facility either in the municipality in which the automobile is principally garaged or within 10 miles of such municipality.

(j) When the insured vehicle is insured under a commercially rated policy that insures five or more vehicles.

(k) When an insurance producer is transferring a book of business from one insurer to another.

(l) When an individual insured’s coverage is being transferred and initiated by a producer to a new insurer.

~~(3) This subsection does not prohibit an insurer from requiring a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage.~~


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(3) ~~(4)~~ The inspection required by this section shall be provided by the insurer or by a person or organization authorized by the insurer. The applicant may be required to pay the cost of the inspection, not to exceed $5. The inspection shall be recorded on a form prescribed by the commission, and the form or a copy shall be retained by the insurer with its policy records for the insured. The insurer shall provide a copy of the form to the insured upon request. Any inspection fee paid directly by the applicant may not be considered part of the premium. However, an insurer that provides the inspection at no cost to the applicant may include the expense of the inspection within a rate filing.

(4) ~~(5)~~ The inspection shall include at least the following:

(a) Taking a physical imprint of the vehicle identification number of the vehicle or otherwise recording the vehicle identification number in a manner prescribed by the commission.

(b) Recording the presence of accessories required by the commission to be recorded.

(c) Recording the locations of and a description of existing damage to the vehicle.

(5) ~~(6)~~ An insurer may defer an inspection for 30 calendar days following the effective date of coverage for a new policy, but not for a renewal policy, and for additional or replacement vehicles to an existing policy, if an inspection at the time of the request for coverage would create a serious inconvenience for the applicant and such hardship is documented in the insured’s policy record.

(6) ~~(7)~~ The commission may, by rule, establish such procedures and notice requirements that it finds necessary to

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implement this section.

(7) Notwithstanding any other provision of this section, an insurer may opt out of the inspection requirements of this section. An insurer opting out of the inspection must file a manual rule with the office indicating that the insurer will not participate in the inspection program under this section. An insurer that files such a manual rule with the office may establish its own preinsurance inspection requirements as a condition to issuing a private passenger motor vehicle insurance policy. The insurer's preinsurance inspection requirements must be included in the manual rule filed with the office. An insurer opting out of the inspection requirements of this section may not require an applicant to pay for the cost of an inspection.

~~(8) The Division of Insurance Fraud of the Department of Financial Services shall provide a report of data from the required preinsurance inspection of motor vehicles to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2016.~~

~~(a) The data must include, but need not be limited to:~~

~~1. A written estimate of the total cost incurred by insurers and policyholders in order to comply with the inspections.~~

~~2. A written estimate of the total cost incurred by insurers to have their motor vehicles inspected.~~

~~3. Documentation regarding the total premium savings for policyholders as a result of the inspections.~~

~~4. Documentation of the total number of inspected motor vehicles that had a preexisting condition.~~

~~5. Documentation regarding the potential fraud in motor~~

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~~vehicle claims incurred within the first 125 days after issuance of a new policy.~~

~~6. Documentation of the total number of referrals of fraudulent acts to the National Insurance Crime Bureau by preinsurance inspectors during the past 5 years.~~

~~(b) The Legislature may use the report data in determining the future public necessity for this section.~~

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

And the title is amended as follows:

Delete line 656

and insert:

statements to include contact information; amending s. 627.744, F.S.; deleting a provision that provides construction; authorizing insurers to opt out of the preinsurance inspection requirements for private passenger motor vehicles; requiring insurers opting out to file a certain manual rule with the Office of Insurance Regulation; authorizing such insurers to establish their own preinsurance inspection requirements, which must be included in the filed manual rule; prohibiting such insurers from requiring applicants to pay for the cost of inspections; deleting an obsolete provision; amending s.

364756

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2017	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 220 - 221

and insert:

(9) On or before December 31, 2018, the Division of Investigative and Forensic Services shall create a report detailing best practices for the detection, investigation, prevention, and reporting of insurance fraud and other fraudulent insurance acts. The report must be updated as necessary but at least every 2 years. The report must provide:

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(a) Information on the best practices for the establishment of anti-fraud investigative units within insurers;

(b) Information on the best practices and methods for detecting and investigating insurance fraud and other fraudulent insurance acts;

(c) Information on appropriate anti-fraud education and training of insurer personnel;

(d) Information on the best practices for reporting insurance fraud and other fraudulent insurance acts to the Division of Investigative and Forensic Services and to other law enforcement agencies;

(e) Information regarding the appropriate level of staffing and resources for anti-fraud investigative units within insurers;

(f) Information detailing statistics and data relating to insurance fraud which insurers should maintain; and

(g) Other information as determined by the Division of Investigative and Forensic Services.

(10) ~~(8)~~ The department may adopt rules to administer this section, except that it shall adopt rules to administer subsection (5).

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

And the title is amended as follows:

Delete line 17

and insert:

the failure to comply with requirements of the section; requiring the Division of Investigative and Forensic Services of the department to create, by a

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specified date, a report detailing best practices for the detection, investigation, prevention, and reporting of insurance fraud and other fraudulent insurance acts; requiring such report to be updated at certain intervals; specifying required information in the report; requiring the department to adopt rules relating to insurers' annual reporting of certain data;

By the Committee on Banking and Insurance; and Senator Brandes

597-03362-17 20171012c1

A bill to be entitled

An act relating to insurer anti-fraud efforts; reordering and amending s. 626.9891, F.S.; defining and revising definitions; requiring every insurer to designate at least one primary anti-fraud employee for certain purposes; requiring insurers to adopt an anti-fraud plan; revising insurer requirements in providing anti-fraud information to the Department of Financial Services; requiring specified information to be filed annually with the department; revising the information to be provided by insurers who write workers' compensation insurance; requiring each insurer to provide annual anti-fraud education and training; requiring insurers who submit an application for a certificate of authority after a specified date to comply with the section; providing penalties for failure to comply with requirements of the section; creating s. 626.9896, F.S.; providing legislative intent; creating a grant program to fund the Insurance Fraud Dedicated Prosecutor Program within the department; requiring moneys that are appropriated for the program be used to fund specific attorney and paralegal positions; specifying procedures to be used by state attorneys' offices when applying for biennial grants; specifying that grants are for two years but authorizing the division to renew the grants; specifying procedures to be used by the department in awarding grant funds; requiring the Division of Investigative and Forensic Services to provide an

597-03362-17 20171012c1

annual report to the Executive Office of the Governor, the Speaker of the House of Representatives, and the Senate President; specifying information to be contained in the report; authorizing the department to adopt rules to administer and implement the insurance fraud dedicated prosecutor program; amending s. 641.3915, F.S.; deleting obsolete provisions; providing an effective date.

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

Section 1. Section 626.9891, Florida Statutes, is reordered and amended to read:

626.9891 Insurer anti-fraud investigative units; reporting requirements; penalties for noncompliance.—

(1)~~(5)~~ As used in ~~For purposes of~~ this section, the term:

(a) "Anti-fraud investigative unit" means the designated anti-fraud unit or division, or contractor authorized under subparagraph (2)(a)2.

(b) "Designated anti-fraud unit or division" includes a distinct unit or division or a unit or division made up of ~~the assignment of fraud investigation to~~ employees whose principal responsibilities are the investigation and disposition of claims who are also assigned investigation of fraud. ~~If an insurer creates a distinct unit or division, hires additional employees, or contracts with another entity to fulfill the requirements of this section, the additional cost incurred must be included as an administrative expense for ratemaking purposes.~~

(2)~~(1)~~ By December 31, 2017, every insurer admitted to do

business in this state ~~who in the previous calendar year, at any time during that year, had $10 million or more in direct premiums written~~ shall:

(a)1. Establish and maintain a designated anti-fraud unit or division within the company to investigate and report possible fraudulent insurance acts ~~claims~~ by insureds or by persons making claims for services or repairs against policies held by insureds; or

2.~~(b)~~ Contract with others to investigate and report possible fraudulent insurance acts by insureds or by persons making claims for services or repairs against policies held by insureds.

(b) Adopt an anti-fraud plan.

(c) Designate at least one employee with primary responsibility for implementing the requirements of this section.

(d) Electronically ~~An insurer subject to this subsection shall~~ file with the Division of Investigative and Forensic Services of the department, and annually thereafter ~~on or before July 1, 1996~~, a detailed description of the designated anti-fraud unit or division ~~established pursuant to paragraph (a)~~ or a copy of the contract executed under subparagraph (a)2., as applicable, a copy of the anti-fraud plan, and the name of the employee designated under paragraph (c) ~~and related documents required by paragraph (b)~~.

An insurer must include the additional cost incurred in creating a distinct unit or division, hiring additional employees, or contracting with another entity to fulfill the requirements of

this section, as an administrative expense for ratemaking purposes.

~~(2) Every insurer admitted to do business in this state, which in the previous calendar year had less than $10 million in direct premiums written, must adopt an anti-fraud plan and file it with the Division of Investigative and Forensic Services of the department on or before July 1, 1996. An insurer may, in lieu of adopting and filing an anti-fraud plan, comply with the provisions of subsection (1).~~

(3) Each ~~insurers~~ anti-fraud plan must ~~plans shall~~ include:

(a) An acknowledgement that the insurer has established procedures for detecting and investigating possible fraudulent insurance acts relating to the different types of insurance by that insurer ~~A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts~~;

(b) An acknowledgment that the insurer has established ~~A description of the insurer's~~ procedures for the mandatory reporting of possible fraudulent insurance acts to the Division of Investigative and Forensic Services of the department;

(c) An acknowledgement that the insurer provides the ~~A description of the insurer's plan for~~ anti-fraud education and training required by this section to the anti-fraud investigative unit ~~of its claims adjusters or other personnel~~; ~~and~~

(d) A description of the required anti-fraud education and training;

(e) A ~~written~~ description or chart ~~outlining~~ ~~the organizational arrangement~~ of the insurer's anti-fraud investigative unit, including the position titles and

descriptions of staffing; and ~~personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts~~

(f) The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors.

(4) By December 31, 2018, each insurer shall provide staff of the anti-fraud investigative unit at least 2 hours of initial anti-fraud training that is designed to assist in identifying and evaluating instances of suspected fraudulent insurance acts in underwriting or claims activities. Annually thereafter, an insurer shall provide such employees a 1-hour course that addresses detection, referral, investigation, and reporting of possible fraudulent insurance acts for the types of insurance lines written by the insurer.

(5) Each insurer is required to report data related to fraud for each line of insurance written by the insurer during the prior calendar year. The data shall be reported to the department by March 1, 2019, and annually thereafter, and must include, at a minimum:

(a) The number of policies in effect;

(b) The amount of premiums written for policies;

(c) The number of claims received;

(d) The number of claims referred to the anti-fraud investigative unit;

(e) The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;

(f) The number of claims investigated or accepted by the anti-fraud investigative unit;

(g) The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;

(h) The number of cases referred to the Division of Investigative and Forensic Services;

(i) The number of cases referred to other law enforcement agencies;

(j) The number of cases referred to other entities; and

(k) The estimated dollar amount or range of damages on cases referred to the Division of Investigative and Forensic Services or other agencies.

(6) In addition to providing information required under subsections (2), (4), and (5), each insurer writing workers' compensation insurance shall also report the following information to the department, on or before March 1, 2019, and annually thereafter ~~August 1 of each year, on its experience in implementing and maintaining an anti-fraud investigative unit or an anti-fraud plan. The report must include, at a minimum~~:

(a) The estimated dollar amount of losses attributable to workers' compensation fraud delineated by the type of fraud, including claimant, employer, provider, agent, or other type.

(b) The estimated dollar amount of recoveries attributable to workers' compensation fraud delineated by the type of fraud, including claimant, employer, provider, agent, or other type.

(c) The number of cases referred to the Division of

Investigative and Forensic Services, delineated by the type of fraud, including claimant, employer, provider, agent, or other type.

~~(a) The dollar amount of recoveries and losses attributable to workers' compensation fraud delineated by the type of fraud: claimant, employer, provider, agent, or other.~~

~~(b) The number of referrals to the Bureau of Workers' Compensation Fraud for the prior year.~~

~~(c) A description of the organization of the anti-fraud investigative unit, if applicable, including the position titles and descriptions of staffing.~~

~~(d) The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria such as number of policies written, number of claims received on an annual basis, volume of suspected fraudulent claims currently being detected, other factors, and an assessment of optimal caseload that can be handled by an investigator on an annual basis.~~

~~(e) The inservice education and training provided to underwriting and claims personnel to assist in identifying and evaluating instances of suspected fraudulent activity in underwriting or claims activities.~~

~~(f) A description of a public awareness program focused on the costs and frequency of insurance fraud and methods by which the public can prevent it~~.

(7)~~(4)~~ An ~~Any~~ insurer who obtains a certificate of authority has 6 ~~after July 1, 1995, shall have 18~~ months in which to comply with subsection (2), and one calendar year thereafter, to comply with subsections (4), (5), and (6) ~~the~~

~~requirements of this section~~.

(8)~~(7)~~ If an insurer fails ~~to timely submit a final acceptable anti-fraud plan or anti-fraud investigative unit description, fails to implement the provisions of a plan or an anti-fraud investigative unit description,~~ or otherwise refuses to comply with the provisions of this section, the department, office, or commission may:

(a) Impose an administrative fine of not more than $2,000 per day for such failure ~~by an insurer to submit an acceptable anti-fraud plan or anti-fraud investigative unit description,~~ until the department, office, or commission deems the insurer to be in compliance;

(b) Impose an administrative fine for failure by an insurer to implement or follow the provisions of an anti-fraud plan or anti-fraud investigative unit description; or

(c) Impose the provisions of both paragraphs (a) and (b).

(9)~~(8)~~ The department may adopt rules to administer this section.

Section 2. Section 626.9896, Florida Statutes, is created to read:

626.9896 Insurance Fraud Dedicated Prosecutor Program.—

(1) LEGISLATIVE INTENT.—The Legislature recognizes the increasing problem of insurance fraud, the need to adequately investigate and prosecute insurance fraud, and the need to create a program dedicated to the prosecution of insurance fraud. The Legislature recognizes that the Division of Investigative and Forensic Services of the department can efficiently and effectively implement and monitor such a program, and can direct and reallocate resources as insurance

fraud trends change and demand for prosecutorial resources shift between judicial circuits.

(2) ESTABLISHMENT OF THE INSURANCE FRAUD DEDICATED PROSECUTOR PROGRAM.—There is created within the department a grant program to fund the Insurance Fraud Dedicated Prosecutor Program. The purpose of the program is to provide grants to state attorneys' offices to fund attorney and paralegal positions that are dedicated exclusively to the prosecution of insurance fraud. The program shall consist only of funds appropriated by the state specifically for this program.

(3) GRANT APPLICATIONS.—Beginning in 2018, a state attorney's office seeking grant funds must submit an application to the Division of Investigative and Forensic Services detailing the proposed number of dedicated prosecutors and paralegals requested for the prosecution of insurance fraud. Applications must be received by July 1 of each even-numbered year and shall identify funding needs for 2 years. Grant awards are contingent upon legislative appropriation in the Insurance Regulatory Trust Fund and Workers' Compensation Administration Trust Fund and subject to renewal by the department. The division must compile and review the timely submitted applications to establish its legislative budget request for the program for the upcoming two years.

(4) AWARD OF GRANTS.—The division is authorized to award grants to state attorneys' offices using a formula adopted by rule of the department and based on metrics and data compiled by the division which allocate funds to the judicial circuits based on trends in insurance fraud and the performance and output measures reported as required by this section. A grant awarded

to a state attorney's office may only be used to fund attorney and paralegal positions that are dedicated exclusively to the prosecution of insurance fraud. Grants are subject to the provisions of s. 215.971. The division shall establish the annual maximum grant amount, based on funds appropriated to the department for funding the Insurance Fraud Dedicated Prosecutor Program.

(5) REPORTING.—The division must track and report on the effectiveness and efficiency of each state attorney's office's use of the awarded grant funds. To help complete the report, each state attorney's office that is awarded a grant under this section must submit performance and output information as determined by the division. The report must be provided to the Executive Office of the Governor, the Speaker of the House of Representatives, and the President of the Senate by September 1, 2020, and annually thereafter. The report must include, but is not limited to, the following:

(a) The amount of grant funds received and expended by each state attorney's office;

(b) A description of the purposes for which the funds were expended, including payment of salaries, expenses, and any other costs needed to support the delivery of services;

(c) The results achieved from the expenditures made, including the number of complaints filed, the number of investigations initiated, the number of arrests made, the number of convictions, and the amount of restitution or fines paid as a result of the cases presented for prosecution.

(6) RULES.—The department may adopt rules pursuant to ss. 120.536(1) and 120.54 for the administration and implementation

of the Insurance Fraud Dedicated Prosecutor Program. Such rules may establish procedures for the Insurance Fraud Dedicated Prosecutor Program, including forms to be used by the state attorney's offices. The department may establish a formula for allocating grant funds, eligibility criteria, renewal requirements, and standards for evaluating the effectiveness and efficiency of expended funds.

Section 3. Section 641.3915, Florida Statutes, is amended to read:

641.3915 Health maintenance organization anti-fraud plans and investigative units.—Each authorized health maintenance organization and applicant for a certificate of authority shall comply with the provisions of ss. 626.989 and 626.9891 as though such organization or applicant were an authorized insurer. ~~For purposes of this section, the reference to the year 1996 in s. 626.9891 means the year 2000 and the reference to the year 1995 means the year 1999.~~

Section 4. This act shall take effect September 1, 2017.

The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Committee on Appropriations

Subject: Committee Agenda Request

Date: April 19th, 2017

I respectfully request that **Senate Bill #1012**, relating to **Investigative and Forensic Services** be placed on the:

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25
Meeting Date

SB 1012
Bill Number (if applicable)

Topic ANTI-FRAUD EFFORTS

Amendment Barcode (if applicable)

Name SLATER BAYLISS

Job Title

Address 204 S. MONROE ST
Street

Phone 222 8900

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 THE FLORIDA CARPENTERS 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.

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)

4/25/17
Meeting Date

1012
Bill Number (if applicable)

Topic Insurer Anti-fraud efforts

Amendment Barcode (if applicable)

Name BG Murphy

Job Title Deputy Legislative Affairs Director

Address 400 N. Monroe St.
Street

Phone 850-413-7890

Tallahassee FL 32399
City *State* *Zip*

Email BG.Murphy@myFloridacfo.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

APPEARANCE RECORD

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

4.25.17
Meeting Date

1012
Bill Number (if applicable)

167518
Amendment Barcode (if applicable)

Topic Preinsurance inspection

Name Ashley Kalifeh

Job Title lobbyist

Address 101 E. College Avenue Suite 502
Street

Tallahassee | fl | 32301
City | *State* | *Zip*

Phone 2229075

Email akalifeh@capcityconsult.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing American Insurance Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.25.17
Meeting Date

1012
Bill Number (if applicable)

167518
Amendment Barcode (if applicable)

Topic Preinsurance inspection

Name Ashley Kalifeh

Job Title lobbyist

Address 101 E. College Avenue Suite 502
Street

Tallahassee fl 32301
City *State* *Zip*

Phone 2229075

Email akalifeh@capcityconsult.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing American Insurance Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/2017
Meeting Date

1012
Bill Number (if applicable)

589252
Amendment Barcode (if applicable)

Topic Pre-insurance Auto Inspections

Name Jan Gorrie

Job Title Lobbyist

Address 403 E. Park Ave. *Street*

Phone 813-334-5288

Tallahassee, FL 32301 *City State Zip*

Email janeballard@fl.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing CARCO

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

4-25-2017 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

SB1012

Bill Number (if applicable)

~~SS~~ 589252

Amendment Barcode (if applicable)

Amendment to Amendment

Topic Insurance Fraud

Name Meredith Snowden

Job Title Consultant

Address 215 S. Monroe St. Suite 701

Street

Tall. FL 32301

City State Zip

Phone 850-510-9257

Email msnowden@colodny-fass.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against

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

Representing Property Casualty Insurance Association 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

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 1014
INTRODUCER:	Banking and Insurance Committee and Senator Brandes
SUBJECT:	Public Records/Investigation and Tracking of Insurance Fraud/Department of Financial Services
DATE:	April 24, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Peacock	Ferrin	GO	**Favorable**
3.	Sanders	Hansen	AP	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1014 creates a public records exemption for certain information submitted to the Department of Financial Services (DFS) by insurers to comply with insurance fraud prevention and reporting requirements. The bill provides that the following information is exempt from public inspection and copying:

- The description of the insurer's required anti-fraud education and training;
- The description or chart of the insurer's anti-fraud investigative unit;
- The rationale for the level of staffing and resources provided to the insurer's anti-fraud investigative unit;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related; and
- The estimated dollar amount or range of damages on cases referred to the DFS's Division of Investigative and Forensic Services or other agencies.

The bill provides that the exemption applies to records held on, before, or after the effective date.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will expire October 2, 2022, unless saved from repeal by the Legislature.

The bill includes a public necessity statement as required by the Florida Constitution.

The Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption.

The bill does not impact state revenue or expenditures.[1]

The bill becomes effective at the same time CS/SB 1012 or similar legislation takes effect.

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.[2] 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.[3]

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.[4] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[5] 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.[6]

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.[7] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official

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[1] Department of Financial Services, *Senate Bill 1014 Fiscal Analysis* (March 14, 2017) (on file with the Senate Appropriations Committee on General Government).
[2] FLA. CONST., art. I, s. 24(a).
[3] *Id*.
[4] 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.
[5] Public records laws are found throughout the Florida Statutes.
[6] Section 119.01(1), F.S.
[7] 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."

agency business which is intended to perpetuate, communicate or formalize knowledge of some type."[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may create an exemption to public records requirements.[10] An exemption must pass by a two-thirds vote of the House and the Senate.[11] 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.[12] A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.[13]

When creating a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[14] 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" may be released at the discretion of the records custodian under certain circumstances.[15]

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.[16] 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.[17] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

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[8] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So.2d 633, 640 (Fla. 1980).
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST., art. I, s. 24(c).
[11] *Id*.
[12] *Id*.
[13] *Halifax Hosp. Medical Center v. New-Journal Corp.,* 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.
[14] 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).
[15] *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).
[16] Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So.3d 379 (Fla. 2013).
[17] Section 119.15(3), F.S.

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 necessary.[18] An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[19]
- 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;[20] or
- It protects trade or business secrets.[21]

In addition, the Legislature must find that the purpose of the exemption overrides the Florida's public policy strongly favoring open government.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:[22]

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.[23] 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 otherwise provided for by law.[24]

Department of Financial Services

The Department of Financial Services (DFS) regulates insurance agents, insurance agencies, and insurance adjusters. The DFS Division of Investigative and Forensic Services (division) contains sworn law enforcement officers that investigate various types of insurance fraud including personal injury protection (PIP) fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud. The division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act, false and fraudulent insurance claims, and willful violations of the Florida

[18] Section 119.15(6)(b), F.S.
[19] Section 119.15(6)(b)1., F.S.
[20] Section 119.15(6)(b)2., F.S.
[21] Section 119.15(6)(b)3., F.S.
[22] Section 119.15(6)(a), F.S.
[23] FLA. CONST., art. I, s. 24(c).
[24] Section 119.15(7), F.S.

Insurance Code and rules adopted pursuant to the code. The division employs sworn law enforcement officers to investigate insurance fraud. In Fiscal Year 2014-2015, the division received 17,392 referrals.[25]

Insurer Reporting Requirements

Section 626.9891, F.S., requires each insurer admitted to do business in this state, if the insurer received $10 million or more in direct premiums during the previous calendar year, to establish a unit to investigate possible insurance claim fraud or to contract with others to investigate such fraud. The insurer must file a detailed description of the anti-fraud unit with, or provide a copy of the contract, to the division.[26]

If the insurer received less than $10 million in direct premiums during the previous calendar year, the insurer must submit an anti-fraud plan to the division.[27] The anti-fraud plan must describe:

- A description of the insurer's procedures for detecting and investigating possible fraudulent insurance acts;
- A description of the insurer's procedures for the mandatory reporting of possible fraudulent insurance acts to the division;
- A description of the insurer's plan for anti-fraud education and training of its claims adjusters or other personnel; and
- A written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts.[28]

Workers' compensation insurers are required to report the following to the DFS on or before August 1 of each year:

- The dollar amount of recoveries and losses attributable to workers' compensation fraud delineated by the type of fraud: claimant, employer, provider, agent, or other;
- The number of fraud referrals submitted to the Bureau of Workers' Compensation Fraud for the prior year;
- A description of the organization's anti-fraud investigative unit, if applicable, including the position titles and descriptions of staffing;
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria such as number of policies written, number of claims received on an annual basis, volume of suspected fraudulent claims currently being detected, other factors, and an assessment of optimal caseload that can be handled by an investigator on an annual basis;
- The in-service education and training provided to underwriting and claims personnel to assist in identifying and evaluating instances of suspected fraudulent activity in underwriting or claims activities; and

[25] *See* http://www.fldfs.com/Division/DIFS/resources/documents/2014-15_Annual-Report.pdf (last accessed March 29, 2017).
[26] Section 626.9891(1), F.S.
[27] Section 626.9891(2), F.S.
[28] Section 626.9891(3), F.S.

- A description of a public awareness program focused on the costs and frequency of insurance fraud and methods by which the public can prevent it.[29]

If an insurer fails to comply with the requirements for anti-fraud units or anti-fraud plans or fails to comply with other provisions of law, the DFS, Office of Insurance Regulation, or Financial Services Commission may impose certain administrative fines.[30]

CS/SB 1012: Insurer Anti-fraud Efforts

CS/SB 1012, which is linked to this bill, revises the reporting requirements and requires all insurance companies to file statistical information with the division. Each insurer must adopt an anti-fraud plan or contract with others to investigate possible fraud. Each insurer must also establish a unit to investigate possible fraud or contract with others to investigate possible fraud. Each insurer must electronically file with the division a detailed description of the unit established to investigate possible fraudulent insurance acts or a copy of the contract with the company that investigates fraudulent insurance acts for the insurer.

The anti-fraud plan must include:
- An acknowledgement that the insurer has established procedures for detecting and investigating possible fraudulent insurance acts relating to the different types of insurance written by that insurer;
- An acknowledgment that the insurer has established procedures for the mandatory reporting of possible fraudulent insurance acts to the division;
- An acknowledgement that the insurer provides anti-fraud education and training to its anti-fraud investigative unit;
- A description of the anti-fraud education and training;
- A description or chart of the insurer's anti-fraud investigative unit, including position titles and descriptions of staffing; and
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors.

CS/SB 1012 also requires each insurer to report data related to fraud to the DFS by March 1, 2019, and annually thereafter for each line of insurance written by the insurer during the prior calendar year. The data must include:
- The number of policies in effect;
- The amount of premiums written for policies;
- The number of claims received;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;

[29] Section 626.9891(6), F.S.
[30] Section 626.9891(7), F.S.

- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related;
- The number of cases referred to the division;
- The number of cases referred to other law enforcement agencies;
- The number of cases referred to other entities; and
- The estimated dollar amount or range of damages on cases referred to the division or other agencies.

Currently, there is no public records exemption that applies to these specific records. The DFS suggests it is possible people could access this information and use it for criminal purposes, such as perpetuating insurance fraud or hiding from investigators.[31]

III. Effect of Proposed Changes:

The bill amends s. 626.9891, F.S., to provide that the following information is exempt from public inspection and copying:

- A description of the anti-fraud education and training;
- A description or chart of the insurer's anti-fraud investigative unit, including position titles and descriptions of staffing;
- The rationale for the level of staffing and resources being provided for the anti-fraud investigative unit, which may include objective criteria, such as the number of policies written, the number of claims received on an annual basis, the volume of suspected fraudulent claims detected on an annual basis, an assessment of the optimal caseload that one investigator can handle on an annual basis, and other factors;
- The number of claims referred to the anti-fraud investigative unit;
- The number of other insurance fraud matters referred to the anti-fraud investigative unit that were not claim related;
- The number of claims investigated or accepted by the anti-fraud investigative unit;
- The number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit that were not claim related; and
- The estimated dollar amount or range of damages on cases referred to the division or other agencies.

The exemptions created by the bill apply to records held before, on, or after the effective date of the exemption.

The exemptions created by the bill are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill provides a public necessity statement. The bill notes that public disclosure of fraud detection strategies utilized by insurers would allow criminal elements to use this information to commit insurance fraud. Public disclosure of measures taken by insurers to deter fraud could

[31] Department of Financial Services, *Senate Bill 1014 Fiscal Analysis* (March 8, 2017) (on file with the Senate Appropriations Committee).

injure a business in the marketplace by providing competitors with company statistics and insights into claim investigation processes.

The provisions of this bill cite statutory changes made by CS/SB 1012. This bill becomes effective at the same time CS/SB 1012 or similar legislation takes effect.

IV. Constitutional Issues:

A. Municipality/County Mandate Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. Because the bill creates a public records exemption, the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption. The bill includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law.

The bill creates a public records exemption for certain information maintained by insurers and specified data submitted to the DFS by insurers to comply with insurance fraud prevention and reporting requirements. As such, the exemption does not appear to be in conflict with the constitutional requirements that it be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Taxpayers may benefit from the DFS's increased ability to detect and prevent fraud.[32]

C. Government Sector Impact:

The DFS does not anticipate an impact to state funds or expenditures.[33]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 626.9891 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on April 3, 2017:
The bill narrows the public records exemption and specifies the information that is exempt. The original bill exempted the entire anti-fraud plan rather than specific information from that plan that could damage insurers.

B. Amendments:

None.

[32] Florida Department of Financial Services, *Senate Bill 1014 Analysis* (March 8, 2017) (Copy on file with the Senate Governmental Oversight and Accountability Committee).
[33] Department of Financial Services, *Senate Bill 1014 Fiscal Analysis* (March 8, 2017) (on file with Senate Appropriations Committee).

By the Committee on Banking and Insurance; and Senator Brandes

A bill to be entitled

An act relating to public records; amending s. 626.9891, F.S.; providing an exemption from public records requirements for reports, documents, or other information relating to the investigation and tracking of insurance fraud submitted by insurers to the Department of Financial Services; providing for future legislative review and repeal of the exemption; providing retroactive applicability; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (10) is added to section 626.9891, Florida Statutes, to read:

626.9891 Insurer anti-fraud investigative units; reporting requirements; penalties for noncompliance.—

(10)(a) The information submitted to the department pursuant to paragraphs (3)(d), (e), and (f) and paragraphs (5)(d), (e), (f), (g), and (k) is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) This exemption applies to records held before, on, or after the effective date of this exemption.

Section 2. (1) The Legislature finds that it is a public

necessity to make exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution the description of an insurer's anti-fraud education and training, the description of an insurer's anti-fraud investigative unit, and an insurer's rationale for the level of staffing and resources it provides to the anti-fraud investigative unit as required in s. 626.9891(3)(d), (e), and (f), Florida Statutes, and filed with the Division of Investigative and Forensic Services pursuant to s. 626.9891(2), Florida Statutes, and the data collected and reported to the Division of Investigative and Forensic Services pursuant to s. 626.9891(5)(d), (e), (f), (g), and (k), Florida Statutes.

(2) The description of an insurer's anti-fraud education and training that assists in identifying and evaluating instances of suspected fraudulent insurance acts, the description of an insurer's anti-fraud investigative unit, and an insurer's rationale for the level of staffing and resources it provides to the anti-fraud investigative unit will allow the Department of Financial Services to ensure that insurers have adequate procedures in place to properly detect, investigate, and report potential insurance fraud. The public disclosure of this information would allow criminal elements to use such information to identify fraud prevention or detection strategies employed by insurers and use this information to commit insurance fraud. The Legislature further finds that disclosure of this information would allow persons suspected of fraud to be alerted to a potential or ongoing investigation and alter behavior to impede an investigation. To ensure the integrity of such records already in the possession of the department, this

exemption is made retroactive in its application.

(3) The data submitted pursuant to s. 626.9891(5)(d), (e), (f), (g), and (k), Florida Statutes, allow the department to track and assess trends in insurance fraud in this state. Such information includes the number of claims referred to the anti-fraud investigative unit, the number of matters referred to the anti-fraud investigative unit which were not claim-related, the number of claims investigated or accepted by the anti-fraud investigative unit, the number of other insurance fraud matters investigated or accepted by the anti-fraud investigative unit which were not claim-related, and the estimated dollar amount or range of damages on cases referred to the Division of Investigative and Forensic Services or other agencies. The public disclosure of this information could injure a business in the marketplace by providing its competitors with detailed insights into the claim investigation processes and statistics of the company, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, insurers might refrain from providing accurate and unbiased data, thus impairing the department's ability to track and assess insurance fraud in this state. This data will allow insurance fraud investigators to better track, predict, and curb fraud trends in this state by providing access to data gathered by insurers' anti-fraud investigative units. Information regarding the amount of insurance fraud experienced, referred, and addressed internally will be valuable material for the department and will better enable law enforcement agencies to assist state prosecutors in the successful prosecution of fraudulent behavior.

Section 3. This act shall take effect on the same date that CS/SB 1012 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Committee on Appropriations

Subject: Committee Agenda Request

Date: April 18th, 2017

I respectfully request that **Senate Bill #1014**, relating to **Public Records/Invesitgation and Tracking of Insurance Fraud/Department of Financial Services** be placed on the:

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

Senator Jeff Brandes
Florida Senate, District 24

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

1014
Bill Number (if applicable)

Topic Public Records/Investigative & Forensic Svcs.

Amendment Barcode (if applicable)

Name BG Murphy

Job Title Deputy Legislative Affairs Director

Address 400 N. Monroe St.
Street

Phone 850-413-2890

Tallahassee FL 32399
City *State* *Zip*

Email

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:	CS/SB 1312
INTRODUCER:	Community Affairs Committee and Senator Perry
SUBJECT:	Construction
DATE:	April 24, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Favorable**
2.	Present	Yeatman	CA	**Fav/CS**
3.	Davis	Hansen	AP	**Pre-meeting**
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1312 amends various provisions of the Florida Statutes relating to construction and the Florida Building Code. Specifically, the bill:

- Requires the Department of Business and Professional Regulation (DBPR) to use $150,000 from the surcharge assessed on building permits to fund, for the 2017-2018 fiscal year, the University of Florida School of Construction Management continuation of the Construction Industry Workforce Taskforce (CIWT);
- Requires professional engineers to disclose whether they have professional liability insurance and, if so, the limits of the policy prior to contracting for engineering;
- Provides that a professional engineer may certify solar energy systems in lieu of the Florida Solar Energy Center;
- Provides that a pool/spa contractor is not required to subcontract electrical work relating to the installation, replacement, disconnection or reconnection of power wiring of the load side of the dedicated existing electrical disconnecting means, but is required to subcontract certain work related to the circuit breaker;
- Prohibits a political subdivision from adopting or enforcing ordinances or building permit requirements that conflict with corporate trademarks, service marks, logos, color patterns or other corporate branding on real property in connection with business activities related to the sale of liquid fuels or other franchises; providing for preemption of certain local laws and regulations; and providing for retroactive applicability;
- Requires the Florida Building Commission to:

  - Amend the Florida Building Code-Energy Conservation to eliminate duplicative commissioning reporting requirements for HVAC and electrical systems;
  - Authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer; and
  - Adopt certain standards relating to the substitution of components for residential exterior doors;
- Prohibits the Florida Building Commission from adopting national energy conservation standards related to automatic lights;
- Prohibits special or independent districts from requiring the payment of additional fees, charges, or expenses related to providing proof of licensure and insurance coverage;
- Prohibits a county, municipality, special taxing district, public utility, or private utility from:
  - Requiring a separate water connection for a fire sprinkler system for a one-family or two-family dwelling if the dwelling's original water connection can meet the needs of the sprinkler system; or
  - Except under specified circumstances, charging a water or sewer rate for a larger water meter for a one-family or two-family dwelling because of the installation of a fire sprinkler system above that which is charged to a one-family and two-family dwelling with a base meter.
- Prohibits a local government from requiring an owner of a residence to obtain a permit to paint the residence, regardless of whether the residence is owned by a limited liability company;
- Includes municipal gas utilities in the exemption from construction contracting licensure requirements for public utilities;
- Requires the Department of Education, in conjunction with the Department of Economic Opportunity, to create a study to implement the recommendations of the CIWT report dated January 20, 2017. The Department of Education must provide the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives before January 9, 2018;
- Requires CareerSource Florida, Inc., to fund construction training programs using existing federal funds awarded to the corporation for training, and to use the previous statewide Florida ReBuilds program as an implementation model for such programs;
- Provides that the Florida Department of Education and the Florida Department of Economic Opportunity must develop a plan to implement the recommendations of the CIWT report, and submit the plan to the Taskforce by July 1, 2018;
- Provides that CareerSource Florida, Inc., must develop a plan to implement the recommendations of the Construction Industry Workforce Taskforce using existing federal funds and the Florida ReBuilds implementation model, and submit the plan to the Taskforce by July 1, 2018;
- Revises the process by which the Florida Building Code will be adopted such that the commission shall use the I-Codes, the National Electric Code, or other nationally adopted model codes and standards for updates to the Florida Building Code and shall review the most current updates of such codes;
- Requires the commission to adopt any provision from the International Code Council I-Codes (I-Codes), the National Electrical Code, or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal

Emergency Management Agency, and the United States Department of Housing and Urban Development;
- Provides that a technical advisory committee must receive a two-thirds vote, rather than a three-fourths vote, of the members present at the meeting in order to make a favorable recommendation to the commission;
- Provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources. However, any carried forward technical amendment is subject to review or modification under certain circumstances; and
- Requires the commission to adopt the Florida Building Code by a two-thirds vote of the members present.

The bill has a negative fiscal impact on state revenues and expenditures. The impact on local governments is indeterminate, but most likely insignificant. *See* Section V. Fiscal Impact Statement.

II. Present Situation:

The Florida Building Code and the Florida Building Commission

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code that would ensure minimum standards for the public's health and safety. Four separate model codes were available that local governments could consider and adopt. In that system, the state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[1]

In 1996, a study commission was appointed to review the system of local codes created by the 1974 law and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code, and that first edition replaced all local codes on March 1, 2002. In 2004, for the second edition of the Florida Building Code, the state adopted the International Code Council I-Codes (I-Codes).[2] All subsequent Florida Building Codes have been adopted utilizing the I-Codes as the base code. The most recent Florida Building Code is the fifth edition, which is referred to as the 2014 Florida Building Code. The 2014 Florida Building Code went into effect June 30, 2015.[3]

[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, *available at* http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Apr. 18, 2017).
[2] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." The ICC publishes I-Codes: a complete set of model comprehensive, coordinated building safety and fire prevention codes, for all aspects of construction, that have been developed by ICC members. All 50 states have adopted the I-Codes.
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Apr. 18, 2017).

The commission was statutorily created to implement the Florida Building Code. The commission, which is housed within the DBPR, is a 27-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The commission also approves products for statewide acceptance. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the Florida Building Code.[4]

Most substantive issues before the commission are vetted through a workgroup process. Consensus recommendations are developed and submitted by appointed representative stakeholder groups in an open process with several opportunities for public input.

According to the commission:

> General consensus is a participatory process whereby, on matters of substance, the members strive for agreements which all of the members can accept, support, live with or agree not to oppose. In instances where, after vigorously exploring possible ways to enhance the members' support for the final decision on substantive decisions, and the Commission finds that 100 percent acceptance or support is not achievable, final decisions require at least 75 percent favorable vote of all members present and voting.[5]

Building Code Cycle

Under s. 553.73(7)(a), F.S., the commission must update the Florida Building Code every three years. When updating the Florida Building Code, the commission is required to use the most current version of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Residential Code, and the International Electrical Code. These I-Codes form the foundation codes of the updated Florida Building Code.

Any amendments or modifications to the foundation codes found within the Florida Building Code remain in effect only until the effective date of a new edition of the Florida Building Code, every three years.[6] At that point, the amendments or modifications to the foundation codes are removed, unless the amendments or modifications are related to state agency regulations or are related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties, which are carried forward into the next edition of the Florida Building Code.

When a provision of the current Florida Building Code is not part of the foundation codes, an industry member or another interested party must resubmit the provision to the commission

[4] Section 553.74, F.S.
[5] Florida Building Commission, Florida Building Commission Consensus-Building Process, *available at* http://www.floridabuilding.org/fbc/commission/FBC_0608/Commission/FBC_Discussion_and_Public_Input_Processes.htm (last visited Apr. 18, 2017).
[6] Section 553.73(7)(g), F.S.

during the Florida Building Code adoption process in order to be considered for the next edition of the Florida Building Code.[7]

Amendments between Cycles

Section 553.73(8), F.S., authorizes the commission to approve amendments pursuant to the rule adoptions procedure in ch. 120, F.S., which are needed to address:

- Conflicts within the updated Florida Building Code;
- Conflicts between the updated Florida Building Code and the Florida Fire Prevention Code adopted pursuant to ch. 633, F.S.;
- Unintended results from the integration of the previously adopted Florida-specific amendments;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law; or
- Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

However, the commission may not approve amendments that would weaken the construction requirements relating to wind resistance or the prevention of water intrusion.

The commission may also approve technical amendments to the Florida Building Code once a year for statewide or regional application if the amendment:[8]

- Is needed in order to accommodate the specific needs of Florida;
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public;
- Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction;
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities; and
- Does not degrade the effectiveness of the Florida Building Code.

The 6th Edition of the Florida Building Code

The commission is currently conducting its rule development process for the 6th Edition of the Florida Building Code. Under s. 553.73(7)(e), F.S., a rule updating the Florida Building Code does not take effect until six months after the publication of the updated Florida Building Code. The 6th Edition of the Florida Building Code is tentatively expected to go into effect on December 31, 2017.[9]

[7] Section 553.73(7)(g), F.S.
[8] Section 553.73(9), F.S.
[9] 6th Edition (2017) FBC Code Update Development Tasks, *available at* http://www.floridabuilding.org/fbc/thecode/2017_Code_Development/Timelines/FBC_WorkplanOption1-2015.pdf (Last visited Apr. 18, 2017).

The 6th Edition of the Florida Building Code will incorporate the latest version of the I-Codes (2015). The next edition of the I-Codes will be the 2018 I-Codes.

Voting Processes for the Technical Advisory Committees and the Commission

Under s. 553.73(3)(b), F.S., in order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the meeting, and at least half of the regular members must be present in order to conduct the meeting.

The Florida Administrative Code, under 61G20-2.002(7), F.A.C., provides a similar requirement for votes taken by the commission. Specifically, the provision provides that "the decision of the commission to approve a proposed amendment shall be by 75 percent vote. Those proposals failing to meet the vote requirement shall not be adopted."

Solar Energy Systems

Florida Solar Energy Center

The Florida Statutes require that all solar energy systems[10] manufactured or sold in the state must meet standards established by the Florida Solar Energy Center (FSEC or center).[11] To accomplish this, the Florida Statutes require the FSEC to:

- Identify the most reliable designs and types of solar energy systems by consulting with people in research centers who are engaged in researching and experimenting with solar energy systems;
- Develop and promulgate standards for solar energy systems;
- Establish criteria for testing the performance of solar energy systems; and
- Maintain the necessary capability for testing or evaluating performance of solar energy systems.[12]

The FSEC may accept test results from other persons or entities if the tests are conducted according to the criteria established by the center and if the testing entity does not have a vested interest in the manufacture, distribution, or sale of solar energy systems.[13]

The FSEC also accepts standards and certifications for solar thermal products from the Solar Rating and Certification Program (SRCC) and the International Association of Plumbing and Mechanical Officials (IAPMO).[14]

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[10] The term "solar energy systems" means equipment that collects and uses incident solar energy for water heating, space heating or cooling, or other applications which normally require a conventional source of energy such as petroleum products, natural gas, or electricity, and which performs primarily with solar energy. If solar energy is used in a supplemental way, only those components that collect and transfer solar energy are included. Section 377.705(3)(b), F.S.
[11] Section 377.705(4), F.S.
[12] *Id.*
[13] *Id.*
[14] Florida Solar Energy Center, *Testing and Certification*, http://www.fsec.ucf.edu/En/certification-testing/index.htm. SRCC produces solar thermal standards and certifications that are used globally. Solar Rating & Certification Corporation, *About Us – General*, http://www.solar-rating.org/about/general.html. IAPMO certifies solar thermal products for use in North America.

In 2009, the Office of Program Policy Analysis & Government Accountability (OPPAGA) reported that FSEC had a two-year backlog for testing and certifying solar energy systems, adversely affecting both manufacturers and citizens.[15] However, in 2011, OPPAGA reported that the FSEC had eliminated the backlog and testing times were down to 129 days due to streamlined testing procedures.[16]

Professional Engineers

Current law provides that only professional engineers or licensed engineers may practice engineering in Florida. Engineers are regulated by the Florida Board of Professional Engineers (Board). The Board is responsible for reviewing applications, administering exams, licensing qualified applicants, and regulating and enforcing the proper practice of engineering in the state. The Board is comprised of 11 members appointed by the Governor and meets six times a year.[17] Administrative, investigative, and prosecutorial services are provided to the Board by the Florida Engineers Management Corporation (FEMC).[18] FEMC is a non-profit, single purpose corporation that operates through a contract with the Department of Business and Professional Regulation (DBPR).

In order to obtain licensure as a professional engineer, applicants must pass a fundamentals examination and a principles and practice examination, have good moral character, obtain a degree from a four year engineering curriculum, and have four years of engineering experience.[19]

Current law does not require professional engineers to maintain professional liability insurance unless the engineer is performing building inspection services.[20] A professional engineer is also not required to disclose to a client whether they maintain professional liability insurance. If the professional engineer does have professional liability insurance, they are not currently required to disclose the limits of such policy.

Construction Industry Workforce Taskforce Recommendations

In 2016, the Legislature created the Construction Industry Workforce Taskforce (CIWT) to address the construction industry labor force shortage in the state.[21] The CIWT proposed a list of

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International Association of Plumbing and Mechanical Officials, *Solar Product Certification*, http://www.iapmort.org/Pages/SolarCertification.aspx (last visited April 18, 2017).

[15] OPPAGA, Report No. 09-17, Florida Solar Energy Center Conducts Research and Development; Legislature Could Direct Fee Increases and Drop Certification Requirement, p. 1 (March 2009), available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0917rpt.pdf.

[16] OPPAGA, Report No. 11-19, The Florida Solar Energy Center Eliminated the Backlog for Testing and Certification and Reduced its Reliance on State Funds, p. 1 (September 2011), available at http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1119rpt.pdf.

[17] The Florida Board of Professional Engineers, *About Florida Board of Professional Engineers*, https://fbpe.org/about/about-fbpe/ (last visited on Apr. 18, 2017).

[18] The Florida Board of Professional Engineers, *About Florida Engineers Management Corporation*, https://fbpe.org/about/about-femc/ (last visited on Apr. 18, 2017).

[19] Section 471.015, F.S.

[20] Section 471.033(1), F.S.

[21] Chapter 2016-129, Laws of Fla.

recommendations to remediate the shortage of construction industry workers, including recommending that the Legislature:

- Expand the definition of a Local Educational Agency (LEA), as used in apprenticeship programs in Florida, to include institutions other than public schools, such as private training organization (for profit and nonprofit), labor unions, industry trade associations, or other community based organizations;
- Create a legislative study to consider the appropriateness of moving apprenticeship programs from the Department of Education (DOE) to the Department of Economic Opportunity (DEO), and to address and clarify how current apprenticeships are funded from the state to the LEAs and what options the LEAs have in how they spend apprenticeship funding;
- Require the DOE to recognize the National Center for Construction Education and Research curriculum, or other comparable national curriculum, as eligible for high school credits, college credits, and state supported scholarships (e.g., Bright Futures Scholarship Program);
- Provide additional state Career and Technical Education (CTE) support to be directed towards K-12 programs so that "shop" or other construction related programs are added back into CTE programs;
- Extend for four additional years the "sunset" timeframe for CIWT and provide funding of $100,000 per year and a mechanism to obtain matching funds to continue to coordinate CIWT. Funding will be used to continue data collection and analysis, ongoing economic impact studies, and subsequent strategies, implementation planning, and follow up;
- Direct CareerSource Florida, Inc., (CSF) to set aside existing federal training dollars for construction training programs using the previous state-wide Florida reBuilds Initiative (FRI) as an implementation model;
- Provide funding from the existing DBPR "Building Permit Surcharge" trust fund that is dedicated to better code compliance through the recruitment and training of a qualified workforce;
- Allow for an alternative instructor certification process through the DOE that does not require certification through an LEA;
- Create a joint legislative audit committee to review compliance regarding use of building permit fees beyond the scope of supporting the building department activities; and
- Support the Building Officials Association of America, Inc., in the development of initiatives to further opportunities for potential building code enforcement professionals.[22]

CareerSource Florida, Inc.

CSF is a not-for-profit corporation administratively housed within the DEO and is the principal workforce policy organization for the state. CSF designs and implements strategies that help Floridians enter, remain in, and advance in the workplace. CSF procures and disburses funds for workforce development.[23]

Florida reBuilds Initiative

The FRI was a program formed in 2005 to counter the growing shortage of construction workers. The former Florida Agency for Workforce Innovation (AWI) performed a survey of 50,000

[22] University of Florida, Florida Construction Workforce Taskforce 9-10 (January 27, 2017), http://www.cce.ufl.edu/projects/current-projects/construction-workforce-taskforce/reports/.
[23] Section 445.004, F.S.

employers, which identified 13,712 construction job vacancies. In order to tackle the issue, AWI sought to provide individuals with short-term, entry-level training to enable them to enter into the construction trades.[24]

The FRI targeted areas for training programs were:

- Air Conditioning, Refrigeration, and Heating Technology (maximum of 240 class hours);
- Carpentry (maximum of 120 class hours);
- Dry wall (maximum of 120 class hours);
- Electricity (maximum of 240 class hours);
- Masonry (maximum of 80 class hours);
- Plumbing (maximum of 180 class hours); and
- Roofing (maximum of 120 class hours).

Participants were eligible for the FRI programs if they were 18 years of age, a United States citizen, and willing to commit to attend the full program. If an eligible participant registered for the program, they were entered into a database run by a regional workforce made available to educational providers. Once the educational provider recruited enough eligible participants and was authorized by AWI to begin the program, the participants were enrolled in classes lasting up to eight weeks.

The educational providers were reimbursed $9 per class hour, up to the maximum hours identified per program area. Regional workforce boards were paid $25 per participant in an approved program and $250 per participant who was placed on a job site within 90 days of the program completion.[25]

DBPR Building Permit Surcharge Trust Fund

Section 553.721, F.S., requires all local building departments assess and collect a 1.5 percent surcharge on any building permit issued by their agency for the purpose of enforcing the Florida Building Code. The surcharge assessment is paid directly by the individual or construction professional pulling the permit and is generally passed on to consumers through increased costs for construction. The local jurisdictions collect the assessment and remit the surcharge fees to the DBPR to fund the activities of the Florida Building Commission and the DBPR's Office of Codes and Standards. Local building departments are permitted to retain 10 percent of the surcharge amount they collect to fund participation of their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.

[24] Florida Division of Emergency Management, *Lt. Governor Jennings Unveils Florida Rebuilds Initiative to Assist with Labor Shortage and Hurricane Recovery* (December 13, 2005), *available at* http://www.floridadisaster.org/eoc/eoc_Activations/Wilma05/Reports/FLRebuilds.pdf/.
[25] Florida Agency for Workforce Innovation, *Florida Rebuilds Program Operations*, *available at* http://floridajobs.org/pdg/Memos/FlReBuildsProgOp_Atchmnt_121305.pdf/.

Building Commissioning Reporting Requirements, Automatic Lights and Door Components

Building Commissioning Reports

The Florida Building Code defines "building commissioning" to mean that selected building systems have been designed, installed, and function according to the owner's project requirements, construction documents, and the minimum requirements of the Florida Building Code.[26] Commissioning reports are performed by registered design professionals. A registered design professional is anyone licensed in Florida as an architect, landscape architect, professional engineer, or a land surveyor and mapper.[27]

Section C408 of the fifth edition of the Florida Building Code (Energy Conservation) requires a commercial building to receive a commissioning report prior to receiving a passing mechanical final inspection. Heating, ventilation, air conditioning, and the lighting systems are tested in the report. The commissioning report includes:

- A commission plan which includes:
  - A description of the activities to accomplish in the report including the personnel intended to accomplish the activities;
  - A listing of the equipment, appliances, or systems to be tested, and a description of the tests to be performed;
  - The functions to be tested;
  - Conditions under which the test will be performed; and
  - Measurable criteria for performance.
- A preliminary report of tests and results which must identify:
  - Deficiencies found during testing that have not been corrected; and
  - Tests that cannot be performed because of climate conditions and the conditions required to perform the tests.
- A final report which includes:
  - Test results;
  - Disposition of deficiencies found during testing; and
  - A test procedure used for repeatable testing outcomes.[28]

Door components

Door components are the items such as the hinge, lockset, weatherstrip, trim, and rails that make up a door.

Section R612.9 of the fifth edition of the Florida Building Code (Residential) provides that residential door components may be substituted or interchanged in exterior door assemblies if the components have been approved by an approved product evaluation entity, certification agency, testing laboratory or engineer, and the door components provide equal or greater structural performance as demonstrated by accepted engineering practices.[29]

[26] Section C202 of the 5th edition of the Florida Building Code (Energy Conservation).
[27] Section 725.08(4), F.S.
[28] Section C408 of the 5th edition of the Florida Building Code (Energy Conservation).
[29] Section R612.9 of the 5th edition of the Florida Building Code (Residential).

American National Standards Institute and World Millwork Alliance

The American National Standards Institute (ANSI) is a non-profit organization that aims to strengthen the U.S. market place, protect the environment, and assure the safety and health of consumers by creating and promulgating thousands of standards and guidelines.[30]

The World Millwork Alliance (WMA) is a wholesale distribution association dedicated to the progression and prosperity of the millwork industry.[31] The WMA also develops standards and is accredited by ANSI. In 2009, the WMA developed the WMA 100, a voluntary performance standard for side-hinged exterior doors. The WMA 100:

- Is approved by ANSI;
- Uses the ASTM E330 test method to obtain a full system design pressure rating;
- Defines methods for qualifying door system components for substitution in the rated system; and
- Outlines slab stiffness testing procedures for use in determining component substitution.[32]

The ASTM E330 test is designed by the American Society for Testing and Materials International, and is a standard for determining the effects of a wind load on exterior building surface elements.[33] The fifth edition of the Florida Building Code (Residential) requires exterior doors with side hinges to either conform to the AAMA/WDMA/CSA 101/I.S.2/A440 or the ASTM E330.[34]

American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard

The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) is a society founded in 1894 that focuses on improving building systems, energy efficiency, indoor air quality, and refrigeration through research publishing, continuing education, and standards.[35]

The AHSRAE energy conservation standard for buildings that are not low-rise residential buildings is Standard 90.1-2016 (Standard 90). Section 9.4.1.1(g) of Standard 90 provides that the general lighting power in an enclosed area of a building must automatically reduce by 50 percent within 20 minutes of all occupants leaving the area.[36]

The most current version of the Florida Building Code adopted the 2010 version of Standard 90.[37] However, the 2010 version of Standard 90 does not include Section 9.4.1.1(g).[38] The draft

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[30] ANSI, *About ANSI*, https://www.ansi.org/about_ansi/overview/overview?menuid=1 (last visited on Apr. 18, 2017).
[31] WMA, *About*, http://worldmillworkalliance.com/about/ (last visited on Apr. 18, 2017).
[32] WMA, *ANSI/WMA 100*, http://worldmillworkalliance.com/codes-and-standards/wma-100/ (last visited on Apr. 18, 2017).
[33] ASTM International, *Standard Test Method for Structural Performance of Exterior Windows, Doors, Skylights, and Curtain Walls by Uniform Static Air Pressure Difference*, https://www.astm.org/Standards/E330.htm (last visited on Apr. 18, 2017).
[34] Section R612.3 and R612.5 of the 5th edition of the Florida Building Code (Residential).
[35] ASHRAE, https://www.ashrae.org/about-ashrae (last visited on Apr. 18, 2017).
[36] ASHRAE, *Standard 90.1-2016: Energy Standards for Buildings Except Low-Rise Residential Buildings*, https://ashrae.iwrapper.com/ViewOnline/Standard_90.1-2016_(IP), (last visited Apr. 18, 2017).
[37] Section C405.7 of the 5th edition of the Florida Building Code (Energy Conservation).
[38] ASHRAE, *Standard 90.1-2010: Energy Standards for Buildings Except Low-Rise Residential Buildings*, http://www.usailighting.com/stuff/contentmgr/files/1/b90ce247855d0f17438484c003877338/misc/ashrae_90_1_2010.pdf, (last visited April 18, 2017).

of the 6th edition of the Florida Building Code (2017) does contain provisions that adopt this requirement.[39]

Local Ordinances, Building Permits and Sign Requirements

Florida has adopted a uniform building code in accordance with s. 553.72, F.S. Section 553.79, F.S., as part of the Florida Building Codes Act, has provisions relating to permits, applications, issuance, and inspections pertaining to the Florida Building Code. Local jurisdictions ensure compliance with the Florida Building Code.

Local jurisdictions may set requirements for signs, and sign placement for local businesses by local ordinance.

The Florida Department of Agriculture and Consumer Services regulates gasoline service stations in accordance with ch. 526, F.S. There are approximately 9,000 gasoline stations within Florida.

Federal franchise laws give prospective purchasers of franchises material information needed to weigh risks and benefits of such investments. The Federal Trade Commission's regulations, 16 C.F.R. ss. 436.1, et. seq., require franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees. The Florida Franchise Act, s. 817.416, F.S., provides a private right of action to a civil litigant when a person makes certain misrepresentations related to franchises. Florida does not currently regulate private rights to contract related to franchising. Florida limits franchise regulation to antifraud, unfair trade practices, and creating rights for violations of federal franchise disclosure laws.

Local Government Fees

Section 553.80, F.S., provides that, except for construction regarding correctional and mental health facilities, elevators, storage facilities, educational institutions, and toll collection facilities, each local government and each legally constituted enforcement district with statutory authority shall regulate building construction. Section 553.80(7), F.S., authorizes local governments to provide a schedule of consistent reasonable fees to be used solely for carrying out the local government responsibilities in enforcing the Florida Building Code. The basis for the fee structure must relate to the level of service provided by the local government.

Local governments have created fee schedules to be submitted by contractors at the time of application for a building permit. These fees include inspection fees, plan examination fees, site examination fees, building permit fees (based on square footage of the building), and various administrative fees including re-permitting fees, time extension fees, re-inspection fees, and licensing fees.

Local governments may not require additional fees for:

[39] Department of Business and Professional Regulation, Bill Analysis for HB 1021, (Similar to SB 1312), dated March 28, 2017.

- Providing proof of licensure pursuant to ch. 489, F.S.;
- Recording or filing a license issued; and
- Providing, recording, or filing evidence of workers' compensation insurance coverage required by ch. 440, F.S.[40]

Fire Prevention and Control

Florida's fire prevention and control law, ch. 633, F.S., designates the Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire.[41]

One of the duties of the State Fire Marshal is to adopt by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years.[42]

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the FFPC as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code. These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.[43]

Construction Contracting Exemption for Public Utilities

Construction contractors are licensed and regulated under Part I of ch. 489, F.S., which provides that it is "necessary in the interest of the public health, safety, and welfare to regulate the construction industry." Construction contracting essentially means building or altering a structure for compensation.

In order to perform construction contracting a person must be licensed as a contractor, an employee of a contractor, or fall under one of the exemptions to licensure. Employees of a public utility are exempt from licensure. Public utilities include special gas districts, telecommunications companies, and natural gas transmission companies, "performing construction, maintenance, or development work, which includes, but is not limited to, work on bridges, roads, streets, highways, railroads, or work incidental to their business." Current law requires the DBPR to create a rule to define "work incidental to their business."[44]

[40] Section 553.80(7), F.S.
[41] Section 633.104, F.S.
[42] Section 633.202, F.S.
[43] Sections 633.108, 633.208, and 633.214(4), F.S.
[44] Section 489.103(5), F.S.

The DBPR defined by rule "incidental to their business" to mean work performed exclusively on the supply side of the end use metering device, and excludes all work on the commercial side, house side, or customer side of the end use metering device except for inspections for leaks and the repair thereof, testing of water quality, ignition of pilot lights, and termination of or activation of natural gas flow.[45]

A municipal gas utility is a natural gas utility owned and/or operated by a municipality engaged in serving residential, commercial, and/or industrial customers, usually within the boundaries of the municipality. There are currently 25 municipal gas districts in Florida.[46]

Pool/Spa Contractors

Three types of pool/spa contractors may be licensed in Florida, including commercial pool/spa contractors, residential pool contractors, and swimming pool/spa servicing contractors.[47] Each type of contractor may engage in the scope of work specified s. 489.105(3), F.S., as follows:

- For commercial pool/spa contractors, the scope of work involves, but is not limited to, the *construction, repair, and servicing of any* swimming pool, or hot tub or spa, whether public, private, or otherwise, regardless of use;[48]
- For residential pool/spa contractors, the scope of work involves, but is not limited to, the *construction, repair, and servicing of a residential* swimming pool, or hot tub or spa, regardless of use;[49] and
- For swimming pool/spa servicing contractors means a contractor whose scope of work involves, but is not limited to, the *repair and servicing of a swimming pool, or hot tub or spa, whether public or private, or otherwise,* regardless of use.[50]

[45] Rule 61G4-12.011(10), F.A.C.
[46] *Id.*
[47] *See* ss. 489.105(3)(j), (k), and (l), F.S.
[48] The scope of work for commercial pool/spa contractors also includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. *See* s. 489.105(3)(j), F.S.
[49] The scope of work for residential pool/spa contractors also includes the installation, repair, or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior finishes, the installation of package pool heaters, the installation of all perimeter piping and filter piping, and the construction of equipment rooms or housing for pool/spa equipment, and also includes the scope of work of a swimming pool/spa servicing contractor. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure unless the usage involves construction, modification, or replacement of such equipment. Water treatment that does not require such equipment does not require a license. *See* s. 489.105(3)(k), F.S.
[50] The scope of work includes the repair or replacement of existing equipment, any cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes, and the installation of new pool/spa equipment, interior refinishing, the reinstallation or addition of pool heaters, the repair or replacement of all perimeter piping and filter piping,

A license is not required for the cleaning of a pool or spa in a way that does not affect the structural integrity of the pool or spa or its associated equipment.

Specialty Swimming Pool Contractors

Specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays, including:

- Swimming Pool Layout Specialty Contractors are limited to the layout, shaping, steel installation, and rough piping;
- Swimming Pool Structural Specialty Contractors are limited to the shaping and shooting of gunite, shotcrete, concrete, or similar product mix, and installation of fiberglass shells and vinyl liners;
- Swimming Pool Excavation Specialty Contractors are limited to excavation and earthmoving;
- Swimming Pool Trim Specialty Contractors are limited to the installation of tile and coping, and decorative or interactive water displays or areas that use recirculated water, including waterfalls and spray nozzles;
- Swimming Pool Decking Specialty Contractors are limited to the construction and installation of concrete flatwork, pavers and bricks, retaining walls, and footings;
- Swimming Pool Piping Specialty Contractors are limited to the installation of piping or the installation of circulating, filtering, disinfecting, controlling, or monitoring equipment and devices for pools, spas, hot tubs, and decorative or interactive water displays or areas; and
- Swimming Pool Finishes Specialty Contractors are limited to the coating or plastering of the interior surfaces.[51]

III. Effect of Proposed Changes:

Section 1 amends s. 377.705, F.S., to authorize solar systems manufactured or sold in the state to be approved by the Florida Solar Energy Center or by an engineer licensed pursuant to ch. 471, F.S., using the standards contained in the most recent version of the Florida Building Code.

Section 2 amends s. 471.033, F.S., to authorize the Board of Professional Engineers to take disciplinary action under s. 471.033(3), F.S., against a licensee who fails to disclose to a customer before contracting for engineering service whether the licensee maintains professional liability insurance and the policy limits if the licensee does maintain such insurance.

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the repair of equipment rooms or housing for pool/spa equipment, and the substantial or complete draining of a swimming pool, or hot tub or spa, for the purpose of repair or renovation. The scope of such work does not include direct connections to a sanitary sewer system or to potable water lines. The installation, construction, modification, substantial or complete disassembly, or replacement of equipment permanently attached to and associated with the pool or spa for the purpose of water treatment or cleaning of the pool or spa requires licensure; however, the usage of such equipment for the purposes of water treatment or cleaning does not require licensure *unless the usage involves construction, modification, substantial or complete disassembly, or replacement of such equipment*. Water treatment that does not require such equipment does not require a license. *See* s. 489.105(3)(l), F.S.

[51] *See* Fla. Admin. Code R. 61G4-15.032 (2016).

Section 3 amends s. 489.103, F.S., to exempt employees of municipal gas utilities performing construction, maintenance, or development work from the contractor licensing requirements of Part I of ch. 489, F.S. The bill also removes the requirement that work done by public utility employees must be "incidental to their business" in order to qualify for the licensure exemption and removes the Department of Business and Professional Regulation's (DBPR) rulemaking authority to define the term "incidental to their business."

Section 4 amends s. 489.113, F.S., to provide that pool/spa contractors are not required to subcontract electrical work for the installation, replacement, disconnection, or reconnection of power wiring on the load side of the dedicated existing electrical disconnecting work. Current law requires that unless a contractor holds a state certificate or registration in a trade category, all electrical work must be subcontracted (as must all mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work). Pool/spa contractors, however, would continue to be required to subcontract all electrical work that requires the installation, removal, replacement, or upgrading of a circuit breaker. The bill provides that the revised subcontracting requirement for pool/spa contractors does not apply to other contractor classifications or professions.

Section 5 amends s. 553.721, F.S., related to the surcharge assessed on building permits at the rate of 1.5 percent of the permit fees. The surcharge is for the DBPR's use in administering and enforcing the Florida Building Code. The bill requires the DBPR to provide $150,000 in the 2017-2018 fiscal year to the University of Florida, M.E. Rinker, Sr., School of Construction Management for the continuation of the Construction Industry Workforce Task Force (CIWT).

Section 6 amends s. 553.73, F.S., to require the Florida Building Commission (commission) to use the International Code Council, the National Electric Code (NFPA), or other nationally adopted model codes and standards for updates to the Florida Building Code. The commission shall adopt an updated Florida Building Code every three years through reviews of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. At a minimum, the commission must adopt any provision from the Internation Code Council I-codes (I-Codes), the National Electric Code, or any other code that is necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development. The commission shall also review and adopt updates based substantially on the International Energy Conservation Code; however, the commission must maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction pursuant to s. 553.901, F.S. The commission shall adopt updated codes by rule.

Amendments and modifications, other than local amendments under s. 553.73(4), F.S., to the Florida Building Code, will now remain effective when a new edition of the Florida Building Code is published.

In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds vote of the members present at the meeting. Current law requires a three-fourths vote of the members present at the meeting.

The bill also provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621, F.S. However, any such technical amendment carried forward into the next edition of the Florida Building Code is subject to review or modification.

The bill removes references to Florida-specific amendments because the entire building code will now be Florida-specific. The bill also makes other conforming and clarifying changes in terminology.

The bill prohibits the commission from adopting the 2016 version of the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard (ASHRAE) Standard 9.4.1.1(g) or any provision that requires a door located in the opening between a garage and a residence to be equipped with a self-closing device.

Section 7 amends s. 553.76, F.S., to require the commission to adopt the Florida Building Code, and amendments thereto, by a two-thirds vote of the members present.

Section 8 amends s. 553.79, F.S., to prohibit political subdivisions of the state from adopting or enforcing ordinances, or imposing building permits or other development order requirements that:

- Contain any building, construction, or aesthetic requirement or condition that conflicts with or impairs corporate trademarks, service marks, trade dress, logos, color patterns, design scheme insignia, image standards, or other features of corporate branding identity on real property or improvements thereon used in activities conducted under ch. 526, F.S., related to the sale of liquid fuels, or in carrying out business franchise activities, as defined by Federal Trade Commission regulations in 16 C.F.R. ss. 436.1, et. seq.; or
- Impose requirements related to the design, construction or location of signage that advertises the retail price of gasoline in accordance with the requirements of ss. 526.111 and 526.121, F.S., which prevents the signage from being clearly visible and legible to drivers of approaching motor vehicles.

The bill specifies s. 553.79(20), F.S., does not affect design and construction requirements contained in the Florida Building Code. Additionally, the bill specifies all local ordinances and requirements prohibited by s. 553.79(20), F.S., are preempted and superseded and s. 553.79(20), F.S., shall apply retroactively.

Section 9 amends s. 553.791, F.S., to provide that it is the intent of the Legislature that owners and contractors not be required to pay extra costs related to building permitting requirements when hiring a private provider for plans reviews and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly.

Section 10 amends s. 553.80, F.S., related to local government fees. In addition to local enforcement agencies, independent districts and special districts are prohibited from requiring at any time, including at the time of application for a permit, the payment of any additional fees, charges, or expenses associated with:

- Providing proof of licensure pursuant to ch. 489, F.S.;
- Recording or filing a license issued pursuant to ch. 553, F.S.; or
- Providing, recording, or filing evidence of workers' compensation insurance coverage as required by ch. 440, F.S.

Section 11 creates s. 553.9081, F.S., to require the Florida Building Commission to amend the Florida Building Code-Energy Conservation to:

- Eliminate duplicative commissioning reporting requirements for HVAC and electrical systems;
- Authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer; and
- Prohibit the adoption of ASHRAE Standard 9.4.1.1(g).

Section 12 amends s. 633.208, F.S., on minimum firesafety standards. The bill prohibits a county, municipality, special taxing district, public utility, or private utility from:

- Requiring a separate water connection for a fire sprinkler system for a one-family or two-family dwelling if the dwelling's original water connection can meet the needs of the sprinkler system; and
- Charging a water or sewer rate for a larger water meter for a one-family or two-family dwelling because of the installation of a fire sprinkler system above that which is charged to a one-family and two-family dwelling with a base meter. However, if the installation of fire sprinklers in a one-family or two-family dwelling requires the installation of a larger water meter, only the difference in actual cost between the base water meter and the larger water meter may be charged by the water utility provider.

Section 13 prohibits a local government from requiring an owner of a residence to obtain a permit to paint a residence, regardless of whether the residence is owned by a limited liability company.

Section 14 requires the Department of Education, in conjunction with the Department of Economic Opportunity, to develop a plan to implement the recommendations of the Construction Industry Workforce Task Force Report dated January 20, 2017. The Department of Education must provide the plan to the Construction Industry Workforce Task Force on or before July 1, 2018.

Section 15 requires CareerSource Florida, Inc., to develop and submit a plan to the Construction Industry Workforce Task Force on the potential opportunities for training programs to implement the recommendations of the Construction Industry Workforce Task Force Report, using existing federal funds awarded to the corporation and using the previous State Florida ReBuilds program as an implementation model for such programs. CareerSource Florida, Inc., must provide the plan to the Construction Industry Workforce Task Force on or before July 1, 2018.

Section 16 requires the commission to adopt an amendment to the Florida Building Code-Residential, relating to door components, to provide that, relating to substitution of door components, the components must either:

- Be compliant with ANSI/WMA 100; or
- Be evaluated by an approved product evaluation entity, certification agency, testing laboratory, or engineer and may be interchangeable in exterior door assemblies if the components provide equal or greater structural performance as demonstrated by accepted engineering practices.

Section 17 provides that 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 may decrease local jurisdictions ability to collect additional fees associated with applying for building permits.

B. Private Sector Impact:

Builders and building code officials may benefit from the increased continuity of the Florida Building Code and increased transparency of the updated code adoption process

Homeowners may pay less for water meters, and there may be an increase in the purchase of fire sprinkler systems for residential dwellings.

C. Government Sector Impact:

The bill requires the Department of Business and Professional Regulation (DBPR) to provide $150,000 in the 2017-2018 fiscal year to the University of Florida, M.E. Rinker, Sr., School of Construction Management for the continuation of the Construction Industry Workforce Task Force (CIWT).

The DBPR indicates that the amount of additional fees collected by local jurisdictions associated with applying for building permits maybe be reduced.[52] However, any reduction in fees is indeterminate and likely insignificant.

The Florida Building Commission (commission) will have to review each change to the International Code Council I-Codes (I-Codes) and the International Energy Conservation Code (IECC) individually rather than approving wholesale changes to the Florida Building Code. However, the DBPR stated the changes in the bill relating to the revised Florida Building Code adoption process could be accomplished with current resources.[53]

The Department of Education, in conjunction with the Department of Economic Opportunity, is directed to develop a plan to implement the recommendations of the CIWT. It is anticipated the plan can be completed within existing resources.

The bill requires CareerSource Florida, Inc., to develop and submit a plan to the CIWT for training programs to implement the recommendations of the Task Force, using existing federal funds awarded to the corporation.

CareerSource Florida receives $3 million annually in federal training dollars through the Incumbent Worker Training Program. However, CareerSource Florida's federal funds are currently directed to meet shortfalls in career fields other than construction. Redirecting the federal funds for construction training purposes could leave Florida's current need for training programs in other career fields with deficiencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Business and Professional Regulation (DBPR) noted that its staff was unable to find any duplicative commissioning requirements in the current Florida Building Code, 5th edition (2014), or the draft Florida Building Code, 6th Edition 2017.[54] Additionally, the DBPR noted the reference in section 4 of the bill to American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) s. 9.4.1.1(g) should more properly be ASHRAE Standard 90.1-2013 s. 9.4.1.1(g).[55] Finally, the DBPR noted that Title III of the Energy Conservation and Protection Act requires that all state building codes meet certain energy conservation requirements.[56] Last year, the Florida Building Commission (commission) received certification by the Department of Energy that the commercial provisions of the draft 6th Edition, Florida Building Code (2017), Energy Conservation, met those requirements.[57] The

[52] Department of Business and Professional Regulation, Bill Analysis for HB1021, (Similar to SB 1312), at p. 6, dated March 28, 2017.
[53] *See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SPB 7000, dated January 23, 2017 at page 5.
[54] *Id*.
[55] *Id.*
[56] *Id.*
[57] *Id.*

draft Florida Building Code, 6th Edition (2017), Energy Conservation, may lose federal certification if the provisions incorporating ASHRAE 90.1, Section 9.4.1.1(g), are removed.[58] If the federal certification is lost, the effective date of the Florida Building Code, 6th Edition (2017), could be delayed by six months or more.[59]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 377.705, 471.033, 489.103, 489.113, 553.721, 553.73, 553.76, 553.79, 553.791, 553.80, and 633.208.

The bill creates section 553.9081 of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on April 18, 2017:

- Provides that a professional engineer may certify solar energy systems in lieu of the Florida Solar Energy Center;
- Provides that a professional engineer's license may be disciplined for failing to disclose whether the engineer maintains professional liability insurance and policy limits;
- Modifies the construction contracting exemption for public utilities by providing that employees of public utilities, including municipal gas utilities, are exempt from construction contracting licensure requirements;
- Provides that a pool/spa contractor is not required to subcontract electrical work relating to the installation, replacement, disconnection or reconnection of power wiring of the load side of the dedicated existing electrical disconnecting means, but is required to subcontract certain work related to the circuit breaker;
- Prohibits the Florida Building Commission from adopting the 2016 of the ASHRAE Standard 9.4.1.1(g) relating to energy saving with lights that shut off automatically after 20 minutes; and adopting any provision that requires a door located in the opening between a garage and a residence to be equipped with a self-closing device;
- Prohibits a political subdivision from adopting or enforcing ordinances or building permit requirements that conflict with corporate trademarks, service marks, logos, color patterns or other corporate branding on real property in connection with business activities related to the sale of liquid fuels or other franchises; providing for preemption of certain local laws and regulations; and providing for retroactive applicability;
- Clarifies that it is the Legislature's intent that owners and contractors should not be required to pay twice for building plans and inspections when hiring private providers. Local jurisdictions must calculate the cost savings and reduce fees accordingly;

[58] *Id.*
[59] *Id.*

- Prohibits special or independent districts from requiring payment, at any time, of additional fees, charges, or expenses, related to providing proof of licensure and insurance coverage;
- Provides that the Florida Department of Education and the Florida Department of Economic Opportunity must develop a plan to implement the recommendations of the Construction Industry Workforce Taskforce report, and submit the plan to the Taskforce by July 1, 2018;
- Provides that CareerSource Florida, Inc., must develop a plan to implement the recommendations of the Construction Industry Workforce Taskforce using existing federal funds and the Florida ReBuilds implementation model, and submit the plan to the Taskforce by July 1, 2018;
- Provides that residential door components may be substituted in exterior door assemblies if the components are provided by an approved product evaluation entity, certification agency, testing laboratory or engineer, and the door components provide equal or greater structural performance as demonstrated by accepted engineering practices or comply with the ANSI/WMA 100;
- Revises the process by which the Florida Building Code will be adopted such that the commission shall use the I-Codes, the National Electric Code, or other nationally adopted model codes and standards for updates to the Florida Building Code and shall review the most current updates of such codes;
- Requires the commission to adopt any provision from the I-Codes, the National Electrical Code, or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development;
- Provides that a technical advisory committee must receive a two-thirds vote, rather than a three-fourths vote, of the members present at the meeting in order to make a favorable recommendation to the commission;
- Provides that a technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government is not rendered void when the Florida Building Code is updated if the amendment is necessary to protect or provide for more efficient use of water resources. However, any carried forward technical amendment is subject to review or modification under certain circumstances; and
- Requires the commission to adopt the Florida Building Code by a two-thirds vote of the members present.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Perry) recommended the following:

Senate Amendment (with title amendment)

Between lines 172 and 173
insert:

Section 4. Paragraphs (f) and (g) of subsection (3) of section 489.105, Florida Statutes, are amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for

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compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(f) "Class A air-conditioning contractor" means a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system if such duct work is performed by the contractor as necessary to complete an air-distribution system, boiler and unfired pressure vessel systems, and all appurtenances, apparatus, or equipment used in connection therewith, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping, insulation of pipes, vessels and ducts, pressure and process piping, and

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pneumatic control piping; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; to install, replace, or disconnect dedicated heat pump systems used for the heating of water for swimming pools or spas and the disconnection or reconnection of associated piping and electrical power wiring from the load side of the disconnects and related low voltage control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class A air-conditioning contractor may test and evaluate central air-conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

(g) "Class B air-conditioning contractor" means a contractor whose services are limited to 25 tons of cooling and 500,000 Btu of heating in any one system in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design,

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if not prohibited by law, central air-conditioning, refrigeration, heating, and ventilating systems, including duct work in connection with a complete system only to the extent such duct work is performed by the contractor as necessary to complete an air-distribution system being installed under this classification, and any duct cleaning and equipment sanitizing that requires at least a partial disassembling of the system; to install, maintain, repair, fabricate, alter, extend, or design, if not prohibited by law, piping and insulation of pipes, vessels, and ducts; to replace, disconnect, or reconnect power wiring on the load side of the dedicated existing electrical disconnect switch; to install, disconnect, and reconnect low voltage heating, ventilating, and air-conditioning control wiring; to install, replace, or disconnect dedicated heat pump systems used for the heating of water for swimming pools or spas and the disconnection or reconnection of associated piping and electrical power wiring from the load side of the disconnects and related low voltage control wiring; and to install a condensate drain from an air-conditioning unit to an existing safe waste or other approved disposal other than a direct connection to a sanitary system. The scope of work for such contractor also includes any excavation work incidental thereto, but does not include any work such as liquefied petroleum or natural gas fuel lines within buildings, except for disconnecting or reconnecting changeouts of liquefied petroleum or natural gas appliances within buildings; potable water lines or connections thereto; sanitary sewer lines; swimming pool piping and filters; or electrical power wiring. A Class B air-conditioning contractor may test and evaluate central air-

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conditioning, refrigeration, heating, and ventilating systems, including duct work; however, a mandatory licensing requirement is not established for the performance of these specific services.

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

And the title is amended as follows:

Delete line 14

and insert:

purposes; amending s. 489.105, F.S.; redefining the terms "class A air-conditioning contractor" and "class B air-conditioning contractor"; amending s. 489.113, F.S.; providing that

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LEGISLATIVE ACTION

Senate . House

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The Committee on Appropriations (Perry) recommended the following:

Senate Substitute for Amendment (728698) (with title amendment)

Delete lines 151 - 657
and insert:

Section 2. Subsection (5) of section 489.103, Florida Statutes, is amended to read:

489.103 Exemptions.—This part does not apply to:

(5) Public utilities, including municipal gas utilities and special gas districts as defined in chapter 189,

telecommunications companies as defined in s. 364.02(13), and natural gas transmission companies as defined in s. 368.103(4), on construction, maintenance, and development work performed by their employees~~, which work, including, but not limited to, work on bridges, roads, streets, highways, or railroads, is incidental to their business. The board shall define, by rule, the term "incidental to their business" for purposes of this subsection~~.

Section 3. Section 553.721, Florida Statutes, is amended to read:

553.721 Surcharge.—In order for the Department of Business and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1.5 percent of the permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be $2. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s. 166.201 shall collect the surcharge and electronically remit the funds collected to the department on a quarterly calendar basis for the preceding quarter and continuing each third month thereafter. The unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. All funds remitted to the department pursuant to this section

shall be deposited in the Professional Regulation Trust Fund. Funds collected from the surcharge shall be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program under s. 553.841. Funds allocated to the Florida Building Code Compliance and Mitigation Program shall be $925,000 each fiscal year. The Florida Building Code Compliance and Mitigation Program shall fund the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed $30,000 in the 2016-2017 fiscal year. The department shall provide $150,000 for the 2017-2018 fiscal year from surcharge funds available to the University of Florida M. E. Rinker, Sr., School of Construction Management for the continuation of the Construction Industry Workforce Task Force. Funds collected from the surcharge shall also be used to fund Florida Fire Prevention Code informal interpretations managed by the State Fire Marshal and shall be limited to $15,000 each fiscal year. The State Fire Marshal shall adopt rules to address the implementation and expenditure of the funds allocated to fund the Florida Fire Prevention Code informal interpretations under this section. The funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health and the State Fire Marshal shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and remittance of surcharges pursuant to chapter 120.

Section 4. For the 2017-2018 fiscal year, the sum of

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$150,000 in nonrecurring funds from the Professional Regulation Trust Fund is appropriated to the Department of Business and Professional Regulation Trust Fund for the transfer to the University of Florida M. E. Rinker, Sr., School of Construction Management for the continuation of the Construction Industry Workforce Task Force.

Section 5. Subsection (3) of section 553.73, Florida Statutes, is amended, paragraph (d) is added to subsection (4) of that section, subsections (7) and (8) and paragraphs (a) and (b) of subsection (9) of that section are amended, and subsection (20) is added to that section, to read:

553.73 Florida Building Code.—

(3) The commission shall use the ~~International Codes published by the~~ International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to ~~needed to develop the base code in Florida to form the foundation for~~ the Florida Building Code. The ~~Florida Building~~ commission may approve technical amendments to the code as provided in~~, subject to~~ subsections (8) and (9), ~~after the amendments have been~~ subject to all of the following conditions:

(a) The proposed amendment must have ~~has~~ been published on the commission's website for a minimum of 45 days and all the associated documentation must have ~~has~~ been made available to any interested party before ~~any~~ consideration by a technical advisory committee.~~;~~

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds ~~three-fourths~~ vote of the members present

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at the ~~technical advisory committee~~ meeting. ~~and~~ At least half of the regular members must be present in order to conduct a meeting.~~;~~

(c) After the technical advisory committee has considered and recommended ~~consideration and a recommendation for~~ approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before ~~any~~ consideration by the commission.~~; and~~

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within ~~sections of~~ the Florida Building Code provisions that ~~which~~ address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)

(d) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government pursuant to this subsection is not rendered void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code pursuant to this paragraph is subject to review or modification as provided in this part.

(7)(a) The commission~~, by rule adopted pursuant to ss. 120.536(1) and 120.54,~~ shall adopt an updated ~~update the~~ Florida

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Building Code every 3 years through review of~~. When updating the Florida Building Code, the commission shall select~~ the most current updates ~~version~~ of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by ~~adopted~~ by the International Code Council, and the National Electrical Code, which is copyrighted and published ~~adopted~~ by the National Fire Protection Association. At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development~~, to form the foundation codes of the updated Florida Building Code, if the version has been adopted by the applicable model code entity~~. The commission shall also review and adopt updates based substantially on ~~select the most current version of~~ the International Energy Conservation Code (IECC) ~~as a foundation code~~; however, ~~the IECC shall be modified by~~ the commission shall ~~to~~ maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. The commission shall adopt updated codes by rule.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may adopt as a technical amendment to the Florida Building Code ~~modify~~ any portion of the ~~foundation~~ codes identified in paragraph (a), but only as needed to


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accommodate the specific needs of this state. Standards or criteria adopted from these ~~referenced by the~~ codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments that ~~to the foundation codes which~~ are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are ~~Florida-specific~~ amendments ~~to the foundation codes~~ is readily apparent.

(d) The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to ~~modify the foundation codes to~~ accommodate the specific needs of the state. A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

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(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code ~~foundation codes~~, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.

~~(g) Amendments or modifications to the foundation code pursuant to this subsection shall remain effective only until the effective date of a new edition of the Florida Building Code every third year. Amendments or modifications related to state agency regulations which are adopted and integrated into an edition of the Florida Building Code shall be carried forward into the next edition of the code, subject to modification as provided in this part. Amendments or modifications related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties which are adopted to an edition of the Florida Building Code do not expire and shall be carried forward into the next edition of the code, subject to review or modification as provided in this part. If amendments that expire pursuant to this paragraph are resubmitted through the Florida Building commission code adoption process, the amendments must~~


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~~specifically address whether:~~

~~1. The provisions contained in the proposed amendment are addressed in the applicable international code.~~

~~2. The amendment demonstrates by evidence or data that the geographical jurisdiction of Florida exhibits a need to strengthen the foundation code beyond the needs or regional variations addressed by the foundation code, and why the proposed amendment applies to this state.~~

~~3. The proposed amendment was submitted or attempted to be included in the foundation codes to avoid resubmission to the Florida Building Code amendment process.~~

~~If the proposed amendment has been addressed in the international code in a substantially equivalent manner, the Florida Building commission may not include the proposed amendment in the foundation Code.~~

(8) Notwithstanding ~~the provisions of~~ subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code pursuant ~~only~~ to the rule adoption procedures ~~contained~~ in chapter 120. ~~Provisions of~~ The Florida Building Code, including provisions ~~those~~ contained in referenced standards and criteria which relate~~, relating~~ to wind resistance or the prevention of water intrusion, may not be amended pursuant to this subsection to diminish those standards ~~construction requirements~~; however, the commission may~~, subject to conditions in this subsection,~~ amend the Florida Building Code ~~the provisions~~ to enhance such standards ~~those construction requirements~~. Following the approval of any amendments to the Florida Building Code by the commission and publication of the

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amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments. The commission may approve amendments that are needed to address:

(a) Conflicts within the updated code;

(b) Conflicts between the updated code and the Florida Fire Prevention Code adopted pursuant to chapter 633;

(c) Unintended results from the integration of previously adopted ~~Florida-specific~~ amendments with the model code;

(d) Equivalency of standards;

(e) Changes to or inconsistencies with federal or state law; or

(f) Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.

2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.

3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.

4. Does not discriminate against materials, products,

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methods, or systems of construction of demonstrated capabilities.

5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the code ~~foundation codes~~ to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the ~~foundation~~ code beyond the needs or regional variations addressed by the ~~foundation~~ code and why the proposed amendment applies to this state.

(20) The Florida Building Commission may not:

(a) Adopt the 2016 version of the American Society of

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Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g).

(b) Adopt any provision that requires a door located in the opening between a garage and a residence to be equipped with a self-closing device.

Section 6. Subsection (2) of section 553.76, Florida Statutes, is amended to read:

553.76 General powers of the commission.—The commission is authorized to:

(2) Issue memoranda of procedure for its internal management and control. The commission may adopt rules related to its consensus-based decisionmaking process, including, but not limited to, super majority voting requirements ~~for commission actions relating to the adoption of the Florida Building Code or amendments to the code~~. However, the commission must adopt the Florida Building Code, and amendments thereto, by at least a two-thirds vote of the members present at a meeting.

Section 7. Subsection (20) is added to section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(20) A political subdivision of this state may not adopt or enforce any ordinance or impose any building permit or other development order requirement that:

(a)1. Contains any building, construction, or aesthetic requirement or condition that conflicts with or impairs corporate trademarks, service marks, trade dress, logos, color patterns, design scheme insignia, image standards, or other features of corporate branding identity on real property or improvements thereon used in activities conducted under chapter

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526 or in carrying out business activities defined as a franchise by Federal Trade Commission regulations in 16 C.F.R. ss. 436.1, et. seq.; or

2. Imposes any requirement on the design, construction, or location of signage advertising the retail price of gasoline in accordance with the requirements of ss. 526.111 and 526.121 which prevents the signage from being clearly visible and legible to drivers of approaching motor vehicles in any lane of traffic in either direction on a roadway abutting the gas station premises and which meets height, width, and spacing standards for Series C, D, or E signs, as applicable, published in the latest edition of Standard Alphabets for Highway Signs and Pavement Markings published by the Federal Highway Administration, Office of Traffic Operations.

(b) This subsection does not affect any requirement for design and construction in the Florida Building Code.

(c) All such ordinances and requirements are hereby preempted and superseded by general law. This subsection shall apply retroactively.

(d) This subsection does not apply to property located in a designated historic district.

Section 8. Subsection (2) of section 553.791, Florida Statutes, is amended to read:

553.791 Alternative plans review and inspection.—

(2)(a) Notwithstanding any other law or local government ordinance or local policy, the fee owner of a building or structure, or the fee owner’s contractor upon written authorization from the fee owner, may choose to use a private provider to provide building code inspection services with

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regard to such building or structure and may make payment directly to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner or the fee owner's contractor, upon written authorization of the fee owner. The fee owner may elect to use a private provider to provide plans review or required building inspections, or both. However, if the fee owner or the fee owner's contractor uses a private provider to provide plans review, the local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner or the fee owner's contractor to use a private provider to also provide required building inspections.

(b) It is the intent of the Legislature that owners and contractors not be required to pay extra costs related to building permitting requirements when hiring a private provider for plans reviews and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly.

Section 9. Paragraph (d) of subsection (7) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(7) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall

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be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local government. The basis for a fee structure for allowable activities shall relate to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.

(d) The local enforcement agency, independent district, or special district may not require at any time, including at the time of application for a permit, the payment of any additional fees, charges, or expenses associated with:

1. Providing proof of licensure pursuant to chapter 489;

2. Recording or filing a license issued pursuant to this chapter; or

3. Providing, recording, or filing evidence of workers' compensation insurance coverage as required by chapter 440.

Section 10. Section 553.9081, Florida Statutes, is created to read:

553.9081 Florida Building Code; required amendments.—The Florida Building Commission shall amend the Florida Building Code-Energy Conservation to:

(1)(a) Eliminate duplicative commissioning reporting

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requirements for HVAC and electrical systems; and

(b) Authorize commissioning reports to be provided by a licensed design professional, electrical engineer, or mechanical engineer.

(2) Prohibit the adoption of American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g).

Section 11. Subsection (8) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(8)(a) The provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do not apply to one-family and two-family dwellings. However, fire sprinkler protection may be permitted by local government in lieu of other fire protection-related development requirements for such structures. While local governments may adopt fire sprinkler requirements for one-family ~~one-~~ and two-family dwellings under this subsection, it is the intent of the Legislature that the economic consequences of the fire sprinkler mandate on home owners be studied before the enactment of such a requirement. After the effective date of this act, any local government that desires to adopt a fire sprinkler requirement on one-family ~~one-~~ or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one-family ~~one-~~ or two-family dwellings or any proposed residential subdivision. The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property. The report must include an assessment of the cost savings from any reduced or eliminated impact fees

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if applicable, the reduction in special fire district tax, insurance fees, and other taxes or fees imposed, and the waiver of certain infrastructure requirements including the reduction of roadway widths, the reduction of water line sizes, increased fire hydrant spacing, increased dead-end roadway length, and a reduction in cul-de-sac sizes relative to the costs from fire sprinkling. A failure to prepare an economic report shall result in the invalidation of the fire sprinkler requirement to any one-family ~~one-~~ or two-family dwelling or any proposed subdivision. In addition, a local jurisdiction or utility may not charge any additional fee, above what is charged to a non-fire sprinklered dwelling, on the basis that a one-family ~~one-~~ or two-family dwelling unit is protected by a fire sprinkler system.

(b)1. A county, municipality, special taxing district, public utility, or private utility may not require a separate water connection for a one-family or two-family dwelling fire sprinkler system if the hydraulic design has proven the existing connection is capable of supplying the needed hydraulic demand.

2. A county, municipality, special district, public utility, or private utility may not charge a water or sewer rate to a one-family or two-family dwelling that requires a larger water meter solely due to the installation of fire sprinklers above that which is charged to a one-family and two-family dwelling with a base meter. If the installation of fire sprinklers in a one-family or two-family dwelling requires the installation of a larger water meter, only the difference in actual cost between the base water meter and the larger water meter may be charged by the water utility provider.

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Section 12. A local government may not require an owner of a residence to obtain a permit to paint such residence, regardless of whether the residence is owned by a limited liability company.

Section 13. The Department of Education, in conjunction with the Department of Economic Opportunity, shall develop a plan to implement the recommendations of the Construction Industry Workforce Task Force Report dated January 20, 2017. The Department of Education shall provide the plan to the Construction Industry Workforce Task Force on or before July 31, 2017.

Section 14. CareerSource Florida, Inc., shall develop and submit a plan to the Construction Industry Workforce Task Force on the potential opportunities for training programs to implement the recommendations of the Construction Industry Workforce Task Force Report dated January 20, 2017, using existing federal funds awarded to the corporation and using the previous statewide Florida ReBuilds program as an implementation model for such programs. CareerSource Florida, Inc., shall provide the plan to the Construction Industry Workforce Task Force on or before July 31, 2017.

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

And the title is amended as follows:

Delete lines 6 - 59

and insert:

engineers; amending s. 489.103, F.S.; revising an exemption from construction contracting regulation for certain public utilities; deleting responsibility of

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the Construction Industry Licensing Board to define the term "incidental to their business" for certain purposes; amending s. 553.721, F.S.; requiring the Department of Business and Professional Regulation to provide certain funds allocated to the University of Florida M. E. Rinker, Sr., School of Construction Management for specified purposes; providing an appropriation; amending s. 553.73, F.S.; requiring the Florida Building Commission to use certain entities and codes for updates to the Florida Building Code; revising voting requirements for a technical advisory committee to make a favorable recommendation to the commission; providing that certain technical amendments to the Florida Building Code which are adopted by a local government are not rendered void when the code is updated; specifying that such amendments are subject to review or modification if carried forward into the next edition of the code; requiring the commission to update the Florida Building Code through a review of the most current updates of specified codes; requiring the commission to adopt specified provisions from certain codes; deleting provisions limiting how long an amendment or modification is effective; deleting a provision requiring certain amendments or modifications to be carried forward into the next edition of the code, subject to certain conditions; deleting certain requirements for the resubmission of expired amendments; deleting a provision prohibiting a


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proposed amendment from being included in the code if it has been addressed in the international code; conforming provisions to changes made by the act; prohibiting the commission from adopting certain provisions into the Florida Building Code; amending s. 553.76, F.S.; requiring the commission to adopt the Florida Building Code, and amendments thereto, by a minimum percentage of votes; amending s. 553.79, F.S.; prohibiting a political subdivision from adopting or enforcing certain building permits or other development order requirements; providing construction; providing for preemption of certain local laws and regulations; providing for retroactive applicability; providing an exemption; amending s. 553.791, F.S.; providing

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/25/2017	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 513 - 542

and insert:

Section 9. Section 468.603, Florida Statutes, is reordered and amended to read:

468.603 Definitions.—As used in this part:

(2)~~(1)~~ "Building code administrator" or "building official" means any of those employees of municipal or county governments, or any person contracted, with building construction regulation

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responsibilities who are charged with the responsibility for direct regulatory administration or supervision of plan review, enforcement, or inspection of building construction, erection, repair, addition, remodeling, demolition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance. This term is synonymous with "building official" as used in the ~~administrative chapter of the Standard Building Code and the South~~ Florida Building Code. One person employed or contracted by each municipal or county government as a building code administrator or building official and who is so certified under this part may be authorized to perform any plan review or inspection for which certification is required by this part, including performing any plan review or inspection as a currently designated standard-certified building official under an interagency service agreement with a jurisdiction having a population of 50,000 or fewer.

(4) ~~(2)~~ "Building code inspector" means any of those employees of local governments or state agencies, or any person contracted, with building construction regulation responsibilities who themselves conduct inspections of building construction, erection, repair, addition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by state law or municipal or county ordinance.

(1) ~~(3)~~ "Board" means the Florida Building Code

Administrators and Inspectors Board.

(7) ~~(4)~~ "Department" means the Department of Business and Professional Regulation.

(6) ~~(5)~~ "Certificate" means a certificate of qualification issued by the department as provided in this part.

(5) ~~(6)~~ "Categories of building code inspectors" include the following:

(a) "Building inspector" means a person who is qualified to inspect and determine that buildings and structures are constructed in accordance with the provisions of the governing building codes and state accessibility laws.

(b) "Coastal construction inspector" means a person who is qualified to inspect and determine that buildings and structures are constructed to resist near-hurricane and hurricane velocity winds in accordance with the provisions of the governing building code.

(c) "Commercial electrical inspector" means a person who is qualified to inspect and determine the electrical safety of commercial buildings and structures by inspecting for compliance with the provisions of the National Electrical Code.

(h) ~~(d)~~ "Residential electrical inspector" means a person who is qualified to inspect and determine the electrical safety of one and two family dwellings and accessory structures by inspecting for compliance with the applicable provisions of the governing electrical code.

(e) "Mechanical inspector" means a person who is qualified to inspect and determine that the mechanical installations and systems for buildings and structures are in compliance with the provisions of the governing mechanical code.

(g) ~~(f)~~ "Plumbing inspector" means a person who is qualified to inspect and determine that the plumbing installations and systems for buildings and structures are in compliance with the provisions of the governing plumbing code.

(f) ~~(g)~~ "One and two family dwelling inspector" means a person who is qualified to inspect and determine that one and two family dwellings and accessory structures are constructed in accordance with the provisions of the governing building, plumbing, mechanical, accessibility, and electrical codes.

(d) ~~(h)~~ "Electrical inspector" means a person who is qualified to inspect and determine the electrical safety of commercial and residential buildings and accessory structures by inspecting for compliance with the provisions of the National Electrical Code.

(8) ~~(7)~~ "Plans examiner" means a person who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. Categories of plans examiners include:

(a) Building plans examiner.

(b) Plumbing plans examiner.

(c) Mechanical plans examiner.

(d) Electrical plans examiner.


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(3) ~~(8)~~ "Building code enforcement official" or "enforcement official" means a licensed building code administrator, building code inspector, or plans examiner.

Section 10. Paragraph (c) of subsection (2), paragraphs (a) and (d) of subsection (7), and subsection (10) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to chapter 633, has a minimum of 3 years' verifiable full-time

experience in inspection or plan review, and has satisfactorily completed a building code inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program that provides at least 200 hours but not more than 300 hours of cross-training that is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom


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component of the training program; ~~or~~

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

a. Has at least 5 years' verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 5 years' verifiable full-time experience as a firesafety inspector licensed pursuant to chapter 633.

b. Has satisfactorily completed a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours in the certification category sought, except for one-family and two-family dwelling training programs, which must provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category; or

7.a. Has completed a 4-year internship certification program as a building code inspector or plans examiner while employed full-time by a municipality, county, or other local government jurisdiction, under the direct supervision of a certified building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year for year, but may reduce the requirement to no less than 1 year;

b. Has passed an examination administered by the International Code Council in the certification category sought.

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

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

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

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

(7)(a) The board shall provide for the issuance of provisional certificates valid for 1 year, as specified by board rule, to any ~~newly employed or promoted~~ building code inspector or plans examiner who meets the eligibility requirements described in subsection (2) and any newly employed or promoted building code administrator who meets the eligibility requirements described in subsection (3). The provisional license may be renewed by the board for just cause; however, a provisional license is not valid for longer than 3 years.

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

within such county.

(10)(a) The board may by rule create categories of certification in addition to those defined in s. 468.603(5) and (8) ~~468.603(6) and (7)~~. Such certification categories shall not be mandatory and shall not act to diminish the scope of any certificate created by statute.

(b) The board shall by rule establish:

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

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

3. That partial completion of an internship program may be transferred between jurisdictions on a form prescribed by the board.

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

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

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

Section 11. Subsection (3) of section 468.617, Florida

Statutes, is amended to read:

468.617 Joint building code inspection department; other arrangements.—

(3) Nothing in this part shall prohibit any county or municipal government, school board, community college board, state university, or state agency from entering into any contract with any person or entity for the provision of building code administrator, building official, or building code inspection services regulated under this part, and notwithstanding any other statutory provision, such county or municipal governments may enter into contracts.

Section 12. Paragraphs (d) and (i) of subsection (1) and subsection (2) of section 553.791, Florida Statutes, are amended to read:

553.791 Alternative plans review and inspection.—

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

(d) "Building code inspection services" means those services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~ involving the review of building plans to determine compliance with applicable codes and those inspections required by law of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(i) "Private provider" means a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter 481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term "private

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provider" also includes a person who holds a standard certificate under part XII of chapter 468.

(2)(a) Notwithstanding any other law or local government ordinance or local policy, the fee owner of a building or structure, or the fee owner's contractor upon written authorization from the fee owner, may choose to use a private provider to provide building code inspection services with regard to such building or structure and may make payment directly to the private provider for the provision of such services. All such services shall be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner or the fee owner's contractor, upon written authorization of the fee owner. The fee owner may elect to use a private provider to provide plans review or required building inspections, or both. However, if the fee owner or the fee owner's contractor uses a private provider to provide plans review, the local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner or the fee owner's contractor to use a private provider to also provide required building inspections.

(b) It is the intent of the Legislature that owners and contractors not be required to pay extra costs related to building permitting requirements when hiring a private provider for plans reviews and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly.

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Section 13. Subsection (10) of section 468.609, Florida Statutes, is amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(10) The board may by rule create categories of certification in addition to those defined in s. 468.603(5) and (8) ~~468.603(6) and (7)~~. Such certification categories shall not be mandatory and shall not act to diminish the scope of any certificate created by statute.

Section 14. Section 471.045, Florida Statutes, is amended to read:

471.045 Professional engineers performing building code inspector duties.—Notwithstanding any other provision of law, a person who is currently licensed under this chapter to practice as a professional engineer may provide building code inspection services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~ to a local government or state agency upon its request, without being certified by the Florida Building Code Administrators and Inspectors Board under part XII of chapter 468. When performing these building code inspection services, the professional engineer is subject to the disciplinary guidelines of this chapter and s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of a professional engineer's performing building code inspection services shall be conducted by the Board of Professional Engineers rather than the Florida Building Code Administrators and Inspectors Board. A professional engineer may not perform plans review as an employee of a local government upon any job that the professional engineer or the professional engineer's company

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designed.

Section 15. Section 481.222, Florida Statutes, is amended to read:

481.222 Architects performing building code inspection services.—Notwithstanding any other provision of law, a person who is currently licensed to practice as an architect under this part may provide building code inspection services described in s. 468.603(5) and (8) ~~468.603(6) and (7)~~ to a local government or state agency upon its request, without being certified by the Florida Building Code Administrators and Inspectors Board under part XII of chapter 468. With respect to the performance of such building code inspection services, the architect is subject to the disciplinary guidelines of this part and s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of an architect's performance of building code inspection services shall be conducted by the Board of Architecture and Interior Design rather than the Florida Building Code Administrators and Inspectors Board. An architect may not perform plans review as an employee of a local government upon any job that the architect or the architect's company designed.

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

And the title is amended as follows:

Delete lines 59 - 61

and insert:

applicability; amending s. 468.603, F.S.; revising definitions; amending s. 468.609, F.S.; revising eligibility requirements for the examination for

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certification as a building code inspector or plans examiner to include an internship certification program and other requirements; removing an eligibility condition from provisions related to provisional certificates; requiring the Florida Building Code Administrators and Inspectors Board to establish rules; amending s. 468.617, F.S.; authorizing specified entities to contract for the provision of building code administrator and building official services; amending s. 553.791, F.S.; conforming cross-references; revising the definition of the term "private provider"; providing legislative intent; requiring local jurisdictions to reduce certain permit fees; amending ss. 468.609, 471.045, and 481.222; conforming cross-references; amending s. 553.80, F.S.;

By the Committee on Community Affairs; and Senator Perry

578-03983-17 20171312c1

A bill to be entitled

An act relating to construction; amending s. 377.705, F.S.; revising legislative findings and intent; authorizing solar energy systems manufactured or sold in the state to be certified by professional engineers; amending s. 471.033, F.S.; prohibiting professional engineers from contracting with customers without disclosing whether they maintain certain insurance; amending s. 489.103, F.S.; revising an exemption from construction contracting regulation for certain public utilities; deleting responsibility of the Construction Industry Licensing Board to define the term "incidental to their business" for certain purposes; amending s. 489.113, F.S.; providing that specified pool/spa contractors are not required to subcontract certain work relating to power wiring; requiring such contractors to subcontract all work requiring the installation, removal, replacement, or upgrading of a circuit breaker; providing applicability; amending s. 553.721, F.S.; requiring the Department of Business and Professional Regulation to provide certain funds allocated to the University of Florida M. E. Rinker, Sr., School of Construction Management for specified purposes; amending s. 553.73, F.S.; requiring the Florida Building Commission to use certain entities and codes for updates to the Florida Building Code; revising voting requirements for a technical advisory committee to make a favorable recommendation to the commission; providing that

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certain technical amendments to the Florida Building Code which are adopted by a local government are not rendered void when the code is updated; specifying that such amendments are subject to review or modification if carried forward into the next edition of the code; requiring the commission to update the Florida Building Code through a review of the most current updates of specified codes; requiring the commission to adopt specified provisions from certain codes; deleting provisions limiting how long an amendment or modification is effective; deleting a provision requiring certain amendments or modifications to be carried forward into the next edition of the code, subject to certain conditions; deleting certain requirements for the resubmission of expired amendments; deleting a provision prohibiting a proposed amendment from being included in the code if it has been addressed in the international code; conforming provisions to changes made by the act; prohibiting the commission from adopting certain provisions into the Florida Building Code; amending s. 553.76, F.S.; requiring the commission to adopt the Florida Building Code, and amendments thereto, by a minimum percentage of votes; amending s. 553.79, F.S.; prohibiting a political subdivision from adopting or enforcing certain building permits or other development order requirements; providing construction; providing for preemption of certain local laws and regulations; providing for retroactive

applicability; amending s. 553.791, F.S.; providing legislative intent; requiring local jurisdictions to reduce certain permit fees; amending s. 553.80, F.S.; prohibiting local enforcement agencies, independent districts, and special districts from charging certain fees; creating s. 553.9081, F.S.; requiring the Florida Building Commission to amend certain provisions of the Florida Building Code; amending s. 633.208, F.S.; prohibiting a county, municipality, special taxing district, public utility, or private utility from requiring a separate water connection or charging a specified water or sewage rate under certain conditions; prohibiting a local government from requiring a permit for painting a residence; requiring the Department of Education to develop a plan for specified purposes; requiring the department to provide the plan to the Construction Industry Workforce Task Force by a specified date; requiring CareerSource Florida, Inc., to develop a plan for specified purposes; requiring CareerSource Florida, Inc., to provide the plan to the Construction Industry Workforce Task Force by a specified date; requiring the Florida Building Commission to amend specified provisions of the Florida Building Code related to door components; providing an effective date.

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

Section 1. Section 377.705, Florida Statutes, is amended to

read:

377.705 Solar Energy Center; development of solar energy standards.—

(1) SHORT TITLE.—This act shall be known and may be cited as the Solar Energy Standards Act of 1976.

(2) LEGISLATIVE ~~FINDINGS AND~~ INTENT.—

~~(a) Because of increases in the cost of conventional fuel, certain applications of solar energy are becoming competitive, particularly when life-cycle costs are considered. It is the intent of the Legislature in formulating a sound and balanced energy policy for the state to encourage the development of an alternative energy capability in the form of incident solar energy.~~

~~(b) Toward this purpose,~~ The Legislature intends to ~~provide incentives for the production and sale of, and to set standards for, solar energy systems. Such standards shall~~ ensure that solar energy systems manufactured or sold within the state are effective and represent a high level of quality of materials, workmanship, and design.

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

(a) "Center" means ~~is defined as~~ the Florida Solar Energy Center of the Board of Governors.

(b) "Solar energy systems" means ~~is defined as~~ equipment which provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications which normally require or would require a conventional source of energy such as petroleum products, natural gas, or electricity and which performs primarily with solar energy. In such other systems in which solar energy is

used in a supplemental way, only those components which collect and transfer solar energy shall be included in this definition.

(4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS, REQUIRE DISCLOSURE, SET TESTING FEES.—

(a) The center shall develop and adopt ~~promulgate~~ standards for solar energy systems manufactured or sold in this state based on the best currently available information and shall consult with scientists, engineers, or persons in research centers who are engaged in the construction of, experimentation with, and research of solar energy systems to properly identify the most reliable designs and types of solar energy systems.

(b) The center shall establish criteria for testing performance of solar energy systems and shall maintain the necessary capability for testing or evaluating performance of solar energy systems. The center may accept results of tests on solar energy systems made by other organizations, companies, or persons if ~~when~~ such tests are conducted according to the criteria established by the center and if ~~when~~ the testing entity does not have a ~~has no~~ vested interest in the manufacture, distribution, or sale of solar energy systems.

(c) The center shall be entitled to receive a testing fee sufficient to cover the costs of such testing. All testing fees shall be transmitted by the center to the Chief Financial Officer to be deposited in the Solar Energy Center Testing Trust Fund, which is ~~hereby~~ created in the State Treasury, and disbursed for the payment of expenses incurred in testing solar energy systems.

(d) All solar energy systems manufactured or sold in the state must meet the standards established by the center and

shall display accepted results of approved performance tests in a manner prescribed by the center, unless otherwise certified by an engineer licensed pursuant to chapter 471 using the standards contained in the most recent version of the Florida Building Code.

Section 2. Paragraph (m) is added to subsection (1) of section 471.033, Florida Statutes, to read:

471.033 Disciplinary proceedings.—

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(m) Failing to disclose to a customer before contracting for engineering service whether the licensee maintains professional liability insurance and the policy limits if the licensee does maintain such insurance.

Section 3. Subsection (5) of section 489.103, Florida Statutes, is amended to read:

489.103 Exemptions.—This part does not apply to:

(5) Public utilities, including municipal gas utilities and special gas districts as defined in chapter 189, telecommunications companies as defined in s. 364.02(13), and natural gas transmission companies as defined in s. 368.103(4), on construction, maintenance, and development work performed by their employees~~, which work, including, but not limited to, work on bridges, roads, streets, highways, or railroads, is incidental to their business. The board shall define, by rule, the term "incidental to their business" for purposes of this subsection~~.

Section 4. Paragraph (h) is added to subsection (3) of section 489.113, Florida Statutes, to read:

489.113 Qualifications for practice; restrictions.—

(3) A contractor shall subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work, unless such contractor holds a state certificate or registration in the respective trade category, however:

(h) A pool/spa contractor, as defined in s. 489.105(3)(j), (k), or (l), is not required to subcontract electrical work for the installation, replacement, disconnection, or reconnection of power wiring on the load side of the dedicated existing electrical disconnecting means, but is required to subcontract all electrical work that requires installation, removal, replacement, or upgrading of a circuit breaker. This paragraph does not apply to other contractor classifications or professions.

Section 5. Section 553.721, Florida Statutes, is amended to read:

553.721 Surcharge.—In order for the Department of Business and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1.5 percent of the permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be $2. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s. 166.201 shall collect the surcharge and electronically remit the funds collected to the

department on a quarterly calendar basis for the preceding quarter and continuing each third month thereafter. The unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. All funds remitted to the department pursuant to this section shall be deposited in the Professional Regulation Trust Fund. Funds collected from the surcharge shall be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program under s. 553.841. Funds allocated to the Florida Building Code Compliance and Mitigation Program shall be $925,000 each fiscal year. The Florida Building Code Compliance and Mitigation Program shall fund the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed $30,000 in the 2016-2017 fiscal year. The department shall provide $150,000 for the 2017-2018 fiscal year from surcharge funds available to the University of Florida M. E. Rinker, Sr., School of Construction Management for the continuation of the Construction Industry Workforce Task Force. Funds collected from the surcharge shall also be used to fund Florida Fire Prevention Code informal interpretations managed by the State Fire Marshal and shall be limited to $15,000 each fiscal year. The State Fire Marshal shall adopt rules to address the implementation and expenditure of the funds allocated to fund the Florida Fire Prevention Code informal interpretations under this section. The funds collected from the surcharge may not be used to fund research on

techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health and the State Fire Marshal shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and remittance of surcharges pursuant to chapter 120.

Section 6. Subsection (3) of section 553.73, Florida Statutes, is amended, paragraph (d) is added to subsection (4) of that section, subsections (7) and (8) and paragraphs (a) and (b) of subsection (9) of that section are amended, and subsection (20) is added to that section, to read:

553.73 Florida Building Code.—

(3) The commission shall use the ~~International Codes published by the~~ International Code Council, the National Electric Code (NFPA 70), or other nationally adopted model codes and standards for updates to ~~needed to develop the base code in Florida to form the foundation for~~ the Florida Building Code. The ~~Florida Building~~ commission may approve technical amendments to the code as provided in~~, subject to~~ subsections (8) and (9), ~~after the amendments have been~~ subject to all of the following conditions:

(a) The proposed amendment must have ~~has~~ been published on the commission's website for a minimum of 45 days and all the associated documentation must have ~~has~~ been made available to any interested party before ~~any~~ consideration by a technical advisory committee.~~;~~

(b) In order for a technical advisory committee to make a favorable recommendation to the commission, the proposal must receive a two-thirds ~~three-fourths~~ vote of the members present

at the ~~technical advisory committee~~ meeting. ~~and~~ At least half of the regular members must be present in order to conduct a meeting.~~;~~

(c) After the technical advisory committee has considered and recommended ~~consideration and a recommendation for~~ approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before ~~any~~ consideration by the commission.~~; and~~

(d) A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with chapter 120.

The commission shall incorporate within ~~sections of~~ the Florida Building Code provisions that ~~which~~ address regional and local concerns and variations. The commission shall make every effort to minimize conflicts between the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code.

(4)

(d) A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government pursuant to this subsection is not rendered void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code pursuant to this paragraph is subject to review or modification as provided in this part.

(7)(a) The commission~~, by rule adopted pursuant to ss. 120.536(1) and 120.54,~~ shall adopt an updated ~~update the~~ Florida

Building Code every 3 years through review of~~. When updating the Florida Building Code, the commission shall select~~ the most current updates ~~version~~ of the International Building Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by ~~adopted~~ by the International Code Council, and the National Electrical Code, which is copyrighted and published ~~adopted~~ by the National Fire Protection Association. At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development~~, to form the foundation codes of the updated Florida Building Code, if the version has been adopted by the applicable model code entity~~. The commission shall also review and adopt updates based substantially on ~~select the most current version of~~ the International Energy Conservation Code (IECC) ~~as a foundation code~~; however, ~~the IECC shall be modified by~~ the commission shall ~~to~~ maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. The commission shall adopt updated codes by rule.

(b) Codes regarding noise contour lines shall be reviewed annually, and the most current federal guidelines shall be adopted.

(c) The commission may adopt as a technical amendment to the Florida Building Code ~~modify~~ any portion of the ~~foundation~~ codes identified in paragraph (a), but only as needed to

accommodate the specific needs of this state. Standards or criteria adopted from these ~~referenced by the~~ codes shall be incorporated by reference to the specific provisions adopted. If a referenced standard or criterion requires amplification or modification to be appropriate for use in this state, only the amplification or modification shall be set forth in the Florida Building Code. The commission may approve technical amendments to the updated Florida Building Code after the amendments have been subject to the conditions set forth in paragraphs (3)(a)-(d). Amendments that ~~to the foundation codes which~~ are adopted in accordance with this subsection shall be clearly marked in printed versions of the Florida Building Code so that the fact that the provisions are ~~Florida-specific~~ amendments ~~to the foundation codes~~ is readily apparent.

(d) The commission shall further consider the commission's own interpretations, declaratory statements, appellate decisions, and approved statewide and local technical amendments and shall incorporate such interpretations, statements, decisions, and amendments into the updated Florida Building Code only to the extent that they are needed to ~~modify the foundation codes to~~ accommodate the specific needs of the state. A change made by an institute or standards organization to any standard or criterion that is adopted by reference in the Florida Building Code does not become effective statewide until it has been adopted by the commission. Furthermore, the edition of the Florida Building Code which is in effect on the date of application for any permit authorized by the code governs the permitted work for the life of the permit and any extension granted to the permit.

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.

(f) Provisions of the Florida Building Code ~~foundation codes~~, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be modified to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, modify the provisions to enhance those construction requirements.

~~(g) Amendments or modifications to the foundation code pursuant to this subsection shall remain effective only until the effective date of a new edition of the Florida Building Code every third year. Amendments or modifications related to state agency regulations which are adopted and integrated into an edition of the Florida Building Code shall be carried forward into the next edition of the code, subject to modification as provided in this part. Amendments or modifications related to the wind-resistance design of buildings and structures within the high-velocity hurricane zone of Miami-Dade and Broward Counties which are adopted to an edition of the Florida Building Code do not expire and shall be carried forward into the next edition of the code, subject to review or modification as provided in this part. If amendments that expire pursuant to this paragraph are resubmitted through the Florida Building commission code adoption process, the amendments must~~

~~specifically address whether:~~

~~1. The provisions contained in the proposed amendment are addressed in the applicable international code.~~

~~2. The amendment demonstrates by evidence or data that the geographical jurisdiction of Florida exhibits a need to strengthen the foundation code beyond the needs or regional variations addressed by the foundation code, and why the proposed amendment applies to this state.~~

~~3. The proposed amendment was submitted or attempted to be included in the foundation codes to avoid resubmission to the Florida Building Code amendment process.~~

~~If the proposed amendment has been addressed in the international code in a substantially equivalent manner, the Florida Building commission may not include the proposed amendment in the foundation Code.~~

(8) Notwithstanding ~~the provisions of~~ subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code pursuant ~~only~~ to the rule adoption procedures ~~contained~~ in chapter 120. ~~Provisions of~~ The Florida Building Code, including provisions ~~those~~ contained in referenced standards and criteria which relate~~, relating~~ to wind resistance or the prevention of water intrusion, may not be amended pursuant to this subsection to diminish those standards ~~construction requirements~~; however, the commission may~~, subject to conditions in this subsection,~~ amend the Florida Building Code ~~the provisions~~ to enhance such standards ~~those construction requirements~~. Following the approval of any amendments to the Florida Building Code by the commission and publication of the

amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments. The commission may approve amendments that are needed to address:

(a) Conflicts within the updated code;

(b) Conflicts between the updated code and the Florida Fire Prevention Code adopted pursuant to chapter 633;

(c) Unintended results from the integration of previously adopted ~~Florida-specific~~ amendments with the model code;

(d) Equivalency of standards;

(e) Changes to or inconsistencies with federal or state law; or

(f) Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(9)(a) The commission may approve technical amendments to the Florida Building Code once each year for statewide or regional application upon a finding that the amendment:

1. Is needed in order to accommodate the specific needs of this state.

2. Has a reasonable and substantial connection with the health, safety, and welfare of the general public.

3. Strengthens or improves the Florida Building Code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction.

4. Does not discriminate against materials, products,

methods, or systems of construction of demonstrated capabilities.

5. Does not degrade the effectiveness of the Florida Building Code.

The Florida Building Commission may approve technical amendments to the code once each year to incorporate into the Florida Building Code its own interpretations of the code which are embodied in its opinions, final orders, declaratory statements, and interpretations of hearing officer panels under s. 553.775(3)(c), but only to the extent that the incorporation of interpretations is needed to modify the code ~~foundation codes~~ to accommodate the specific needs of this state. Amendments approved under this paragraph shall be adopted by rule after the amendments have been subjected to subsection (3).

(b) A proposed amendment must include a fiscal impact statement that documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall be established by rule by the commission and shall include the impact to local government relative to enforcement, the impact to property and building owners, and the impact to industry, relative to the cost of compliance. The amendment must demonstrate by evidence or data that the state's geographical jurisdiction exhibits a need to strengthen the ~~foundation~~ code beyond the needs or regional variations addressed by the ~~foundation~~ code and why the proposed amendment applies to this state.

(20) The Florida Building Commission may not:

(a) Adopt the 2016 version of the American Society of

Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g).

(b) Adopt any provision that requires a door located in the opening between a garage and a residence to be equipped with a self-closing device.

Section 7. Subsection (2) of section 553.76, Florida Statutes, is amended to read:

553.76 General powers of the commission.—The commission is authorized to:

(2) Issue memoranda of procedure for its internal management and control. The commission may adopt rules related to its consensus-based decisionmaking process, including, but not limited to, super majority voting requirements ~~for commission actions relating to the adoption of the Florida Building Code or amendments to the code~~. However, the commission must adopt the Florida Building Code, and amendments thereto, by at least a two-thirds vote of the members present at a meeting.

Section 8. Subsection (20) is added to section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(20) A political subdivision of this state may not adopt or enforce any ordinance or impose any building permit or other development order requirement that:

(a)1. Contains any building, construction, or aesthetic requirement or condition that conflicts with or impairs corporate trademarks, service marks, trade dress, logos, color patterns, design scheme insignia, image standards, or other features of corporate branding identity on real property or improvements thereon used in activities conducted under chapter

526 or in carrying out business activities defined as a franchise by Federal Trade Commission regulations in 16 C.F.R. ss. 436.1, et. seq.; or

2. Imposes any requirement on the design, construction, or location of signage advertising the retail price of gasoline in accordance with the requirements of ss. 526.111 and 526.121 which prevents the signage from being clearly visible and legible to drivers of approaching motor vehicles in any lane of traffic in either direction on a roadway abutting the gas station premises and which meets height, width, and spacing standards for Series C, D, or E signs, as applicable, published in the latest edition of Standard Alphabets for Highway Signs and Pavement Markings published by the Federal Highway Administration, Office of Traffic Operations.

(b) This subsection does not affect any requirement for design and construction in the Florida Building Code.

(c) All such ordinances and requirements are hereby preempted and superseded by general law. This subsection shall apply retroactively.

Section 9. Subsection (2) of section 553.791, Florida Statutes, is amended to read:

553.791 Alternative plans review and inspection.—

(2)(a) Notwithstanding any other law or local government ordinance or local policy, the fee owner of a building or structure, or the fee owner's contractor upon written authorization from the fee owner, may choose to use a private provider to provide building code inspection services with regard to such building or structure and may make payment directly to the private provider for the provision of such

services. All such services shall be the subject of a written contract between the private provider, or the private provider's firm, and the fee owner or the fee owner's contractor, upon written authorization of the fee owner. The fee owner may elect to use a private provider to provide plans review or required building inspections, or both. However, if the fee owner or the fee owner's contractor uses a private provider to provide plans review, the local building official, in his or her discretion and pursuant to duly adopted policies of the local enforcement agency, may require the fee owner or the fee owner's contractor to use a private provider to also provide required building inspections.

(b) It is the intent of the Legislature that owners and contractors not be required to pay extra costs related to building permitting requirements when hiring a private provider for plans reviews and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly.

Section 10. Paragraph (d) of subsection (7) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(7) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When

providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local government. The basis for a fee structure for allowable activities shall relate to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.

(d) The local enforcement agency, independent district, or special district may not require at any time, including at the time of application for a permit, the payment of any additional fees, charges, or expenses associated with:

1. Providing proof of licensure pursuant to chapter 489;

2. Recording or filing a license issued pursuant to this chapter; or

3. Providing, recording, or filing evidence of workers' compensation insurance coverage as required by chapter 440.

Section 11. Section 553.9081, Florida Statutes, is created to read:

553.9081 Florida Building Code; required amendments.—The Florida Building Commission shall amend the Florida Building Code-Energy Conservation to:

(1)(a) Eliminate duplicative commissioning reporting requirements for HVAC and electrical systems; and

(b) Authorize commissioning reports to be provided by a

licensed design professional, electrical engineer, or mechanical engineer.

(2) Prohibit the adoption of American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 9.4.1.1(g).

Section 12. Subsection (8) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(8)(a) The provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do not apply to one-family and two-family dwellings. However, fire sprinkler protection may be permitted by local government in lieu of other fire protection-related development requirements for such structures. While local governments may adopt fire sprinkler requirements for one-family ~~one-~~ and two-family dwellings under this subsection, it is the intent of the Legislature that the economic consequences of the fire sprinkler mandate on home owners be studied before the enactment of such a requirement. After the effective date of this act, any local government that desires to adopt a fire sprinkler requirement on one-family ~~one-~~ or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one-family ~~one-~~ or two-family dwellings or any proposed residential subdivision. The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property. The report must include an assessment of the cost savings from any reduced or eliminated impact fees if applicable, the reduction in special fire district tax, insurance fees, and other taxes or fees imposed, and the waiver

of certain infrastructure requirements including the reduction of roadway widths, the reduction of water line sizes, increased fire hydrant spacing, increased dead-end roadway length, and a reduction in cul-de-sac sizes relative to the costs from fire sprinkling. A failure to prepare an economic report shall result in the invalidation of the fire sprinkler requirement to any one-family ~~one-~~ or two-family dwelling or any proposed subdivision. In addition, a local jurisdiction or utility may not charge any additional fee, above what is charged to a non-fire sprinklered dwelling, on the basis that a one-family ~~one-~~ or two-family dwelling unit is protected by a fire sprinkler system.

(b)1. A county, municipality, special taxing district, public utility, or private utility may not require a separate water connection for a one-family or two-family dwelling fire sprinkler system if the hydraulic design has proven the existing connection is capable of supplying the needed hydraulic demand.

2. A county, municipality, special district, public utility, or private utility may not charge a water or sewer rate to a one-family or two-family dwelling that requires a larger water meter solely due to the installation of fire sprinklers above that which is charged to a one-family and two-family dwelling with a base meter. If the installation of fire sprinklers in a one-family or two-family dwelling requires the installation of a larger water meter, only the difference in actual cost between the base water meter and the larger water meter may be charged by the water utility provider.

Section 13. A local government may not require an owner of a residence to obtain a permit to paint such residence,

regardless of whether the residence is owned by a limited liability company.

Section 14. The Department of Education, in conjunction with the Department of Economic Opportunity, shall develop a plan to implement the recommendations of the Construction Industry Workforce Task Force Report dated January 20, 2017. The Department of Education shall provide the plan to the Construction Industry Workforce Task Force on or before July 1, 2018.

Section 15. CareerSource Florida, Inc., shall develop and submit a plan to the Construction Industry Workforce Task Force on the potential opportunities for training programs to implement the recommendations of the Construction Industry Workforce Task Force Report dated January 20, 2017, using existing federal funds awarded to the corporation and using the previous statewide Florida ReBuilds program as an implementation model for such programs. CareerSource Florida, Inc., shall provide the plan to the Construction Industry Workforce Task Force on or before July 1, 2018.

Section 16. The Florida Building Commission shall adopt an amendment to the Florida Building Code-Residential, relating to door components, to provide that, regarding substitution of door components, such components must either:

(1) Comply with ANSI/WMA 100; or

(2) Be evaluated by an approved product evaluation entity, certification agency, testing laboratory, or engineer and may be interchangeable in exterior door assemblies if the components provide equal or greater structural performance as demonstrated by accepted engineering practices.

Section 17. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

4-25-17
Meeting Date

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

SB 1312
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic BUILDING CODES - WORKFORCE

Name KARI HEBRANK

Job Title

Address 113 EAST COLLEGE AVE
Street
TALLAHASSEE FL 32301
City State Zip

Phone 566-7824

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA HOME BUILDERS & NAIA 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.

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)

4-25-17
Meeting Date

SB 1312
Bill Number (if applicable)

692516
Amendment Barcode (if applicable)

Topic BUILDING CODES

Name KARI HEBRANK

Job Title

Address 113 EAST COLLEGE AVE.
Street
TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850-566-7824

Email KHebrank@wilsonmgt.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA HOME BUILDERS ASSOC.

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)

4-25-17
Meeting Date

CS/SB 1312
Bill Number (if applicable)

692516
Amendment Barcode (if applicable)

Topic BUILDING CODES / CONSTRUCTION

Name CAM FENTRISS

Job Title LOBBYIST

Address 1400 VILLAGE SQ # 3-243
Street

Phone 850-222-2772

TAL FL 32312
City *State* *Zip*

Email AFENTRISS@AOL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLA. REFRIGERATION & AC CONTRACTORS 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-25-17
Meeting Date

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

CS/SB 1312
Bill Number (if applicable)

692576
Amendment Barcode (if applicable)

Topic BUILDING CODES / CONSTRUCTION

Name CAM FENTRISS

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQ #3-243
Street

TALL FL 32312
City State Zip

Phone 850-222-2772

Email AFENTRISS@AOL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLA. ROOFING + SHEET METAL CONTRACTORS ASSN

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-25-17
Meeting Date

1312
Bill Number (if applicable)

692516
Amendment Barcode (if applicable)

Topic _____

Name Dale Calhoun

Job Title _____

Address 201 S Monroe St Unit A
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850 681 0496

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Natural Gas Association & Florida Propane Gas Association

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)

4/25/17
Meeting Date

CS/SB 1312
Bill Number (if applicable)

137454
Amendment Barcode (if applicable)

Topic BUILDING CONTRACTORS

Name DAVID RAMBA

Job Title RAMBA LAW GROUP

Address 120 S. MONROE ST.
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850-443-4444

Email david@rambalaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing BUILDING OFFICIALS ASSOC. OF FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/25/17
Meeting Date

(1312)
Bill Number (if applicable)

Topic BUILDING COMMISSION

* [redacted]
Amendment Barcode (if applicable)

Name JEFF STARKEY

Job Title GAC, PRESIDENT

Address 106 E COLLEGE AVE
Street

TLH FL 32301
City *State* *Zip*

Phone 850 224 1660

Email JEFF@STARKEYGROUP.

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NATIONAL ELECTRICAL CONTRACTOR ASSOCIATION

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)

4/25/17
Meeting Date

CS/SB 1312
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Buddy DeWAR

Job Title _____

Address 5501 Tourraine Dr
Street

City *State* *Zip*

Phone 850-566-8733

Email GR8Bud@Aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida FireSprinkler Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/25/17
Meeting Date

1312
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jasmyne Henderson

Job Title Attorney

Address 1024 East Park Avenue
Street

Tallahassee Florida 32301
City *State* *Zip*

Phone (850) 216-1002

Email jasmyne@pfhmanfau.com

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4.26.17
Meeting Date

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

SB 1312
Bill Number (if applicable)

Topic CONSTRUCTION

Amendment Barcode (if applicable)

Name MEGAN SIRYANE SAMPLES

Job Title LEGISLATIVE ADVOCATE

Address P.O. BOX 1757
Street

Phone 850.701.3655

TALLAHASSEE FL 32302
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA LEAGUE OF CITIES

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)

4/25/17
(Meeting Date)

1312
Bill Number (if applicable)

Topic Constitution (Rule)

Amendment Barcode (if applicable)

Name Eric Poole

Job Title Florida Assoc. Counties

Address 100 Monroe St
Street

Tall FL 32311
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Assoc. Counties

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

CourtSmart Tag Report

Room: KN 412 **Case No.:** **Type:**
Caption: Senate Appropriations Committee **Judge:**

Started: 4/25/2017 9:03:49 AM
Ends: 4/25/2017 1:01:00 PM Length: 03:57:12

9:03:48 AM Sen. Latvala (Chair)
9:06:01 AM S 684
9:06:22 AM Sen. Baxley
9:06:50 AM Sen. Latvala
9:07:02 AM Jason Jones, General Counsel, Florida Department of Law Enforcement (waives in support)
9:07:06 AM Barney Bishop, President/CEO, Florida Smart Justice Alliance (waives in support)
9:07:12 AM Chief Jeffrey Chudnow, Chief of Police, The Florida Police Chiefs Association (waives in support)
9:08:19 AM S 686
9:08:22 AM Sen. Baxley
9:08:27 AM Sen. Latvala
9:09:09 AM Jason Jones, General Counsel, Florida Department of Law Enforcement (waives in support)
9:09:12 AM Barney Bishop, President/CEO, Florida Smart Justice Alliance (waives in support)
9:09:15 AM Chief Jeffrey Chudnow, Chief of Police, The Florida Police Chiefs Association (waives in support)
9:10:16 AM S 764
9:10:31 AM Sen. Baxley
9:10:41 AM Sen. Latvala
9:10:45 AM Am. 929072
9:11:02 AM Am. 135936
9:11:15 AM Sen. Baxley
9:11:19 AM Sen. Latvala
9:11:44 AM S 764 (cont.)
9:13:22 AM S 776
9:13:27 AM Sen. Baxley
9:13:38 AM Sen. Latvala
9:13:48 AM Mike BJorklund, Director of Legislative Affairs, Florida Electric Cooperatives Association (waives in support)
9:15:29 AM S 922
9:15:35 AM Sen. Garcia
9:15:46 AM Sen. Latvala
9:15:52 AM Am. 598160
9:16:06 AM Sen. Garcia
9:16:42 AM Sen. Latvala
9:17:06 AM Am. 603728
9:17:26 AM Am. 662786
9:17:36 AM Sen. Garcia
9:18:07 AM Sen. Latvala
9:18:28 AM Am. 603728 (cont.)
9:18:32 AM S 922 (cont.)
9:18:40 AM Elizabeth Boyd, Legislative Affairs Director, Department of Financial Services (waives in support)
9:19:45 AM S 1318
9:19:57 AM Sen. Broxson
9:20:00 AM Sen. Latvala
9:20:04 AM Sen. Broxson
9:20:19 AM Sen. Latvala
9:20:25 AM Sen. Broxson
9:20:55 AM Sen. Latvala
9:21:51 AM S 714
9:21:57 AM Sen. Garcia
9:22:03 AM Sen. Latvala
9:22:06 AM Am. 897830
9:22:24 AM Sen. Garcia
9:22:57 AM Sen. Latvala

9:23:03 AM Robert Brown, Legislative Affairs Director, Agency for Persons with Disabilities (waives in support)
9:24:09 AM S 1044
9:24:18 AM Sen. Garcia
9:25:49 AM Sen. Latvala
9:26:04 AM Am. 126346
9:26:18 AM Sen. Garcia
9:26:34 AM Sen. Latvala
9:26:47 AM Am. 414774
9:27:00 AM Sen. Grimsley
9:27:27 AM Sen. Latvala
9:27:46 AM S 1044 (cont.)
9:27:54 AM Diana Ragbeer, Director of Public Policy, The Children's Trust (waives in support)
9:28:00 AM Barney Bishop, President/CEO, Florida Smart Justice Alliance (waives in support)
9:28:20 AM Brian Pitts, Trustee, Justice-2-Jesus
9:29:50 AM Sen. Flores (Chair)
9:30:46 AM S 1564
9:30:48 AM Sen. Garcia
9:31:04 AM Barney Bishop, President/CEO, Florida Smart Justice Alliance (waives in support)
9:31:09 AM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)
9:31:13 AM Jess McCarty, Assistant County Attorney, Miami-Dade County (waives in support)
9:31:28 AM Sen. Garcia
9:31:42 AM Sen. Flores
9:31:45 AM Sen. Garcia
9:32:29 AM Sen. Flores
9:33:21 AM S 1056
9:33:28 AM Sen. Garcia
9:33:38 AM Sen. Flores
9:33:46 AM Bobby Lolley, Executive Director, Home Care Association of Florida (waives in support)
9:34:30 AM Sen. Latvala
9:34:51 AM Sen. Flores
9:35:00 AM S 814
9:35:02 AM Sen. Broxson
9:35:28 AM Sen. Flores
9:35:33 AM Am. 714754
9:35:36 AM Sen. Broxson
9:35:59 AM Sen. Flores
9:36:08 AM S 814 (cont.)
9:36:19 AM Jane Hennessy, Lobbyist, Florida Life and Health Guaranty Association (waives in support)
9:37:09 AM S 1070
9:37:15 AM Sen. Hutson
9:37:47 AM Sen. Flores
9:37:55 AM Sen. Bracy
9:38:03 AM Sen. Hutson
9:38:11 AM Sen. Bracy
9:38:19 AM Sen. Hutson
9:38:50 AM Sen. Flores
9:38:53 AM Sen. Gibson
9:39:37 AM Sen. Hutson
9:40:15 AM Sen. Flores
9:40:20 AM Sen. Powell
9:40:29 AM Sen. Hutson
9:41:14 AM Sen. Powell
9:41:20 AM Sen. Hutson
9:41:23 AM Sen. Flores
9:41:36 AM Ron Labasky, Florida State Association of Supervisors of Elections (waives in support)
9:41:45 AM Marilynn Wills, League of Women Voters of Florida (waives in support)
9:42:39 AM Sen. Latvala (Chair)
9:42:59 AM S 176
9:43:04 AM Sen. Passidomo
9:43:15 AM Sen. Latvala
9:43:45 AM B. Pitts
9:43:57 AM Sen. Latvala

9:44:08 AM B. Pitts
9:44:34 AM Sen. Latvala
9:46:05 AM S 1104
9:46:17 AM Sen. Perry
9:46:21 AM Sen. Latvala
9:46:28 AM Am. 455720
9:46:37 AM Sen. Perry
9:46:49 AM Sen. Latvala
9:47:12 AM Keyna Cory, Lobbyist, National Waste and Recycling Association (waives in support)
9:47:39 AM David Cullen, Sierra Club Florida
9:48:02 AM Sen. Latvala
9:49:15 AM S 766
9:49:28 AM Am. 597786
9:49:43 AM Sen. Rodriguez
9:50:06 AM Sen. Latvala
9:50:19 AM Chief Jeffrey Chudnow, Chief of Police, The Florida Police Chiefs Association (waives in support)
9:50:52 AM Sen. Flores
9:51:21 AM Sen. Latvala
9:52:20 AM S 524
9:52:25 AM Sen. Steube
9:52:36 AM Sen. Latvala
9:52:43 AM Sen. Steube
9:52:59 AM Sen. Latvala
9:53:09 AM Sen. Flores
9:53:23 AM Sen. Latvala
9:54:18 AM S 732
9:54:22 AM Sen. Steube
9:54:31 AM Sen. Latvala
9:54:41 AM Corinne Mixon, Lobbyist, Florida Association of Physician Assistants (waives in support)
9:55:01 AM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)
9:55:53 AM S 1398
9:56:06 AM Sen. Stewart
9:56:20 AM Sen. Latvala
9:56:23 AM Am. 783680
9:56:47 AM Am. 259196
9:57:23 AM Sen. Stewart
9:57:55 AM Sen. Latvala
9:59:00 AM S 1398 (cont.)
9:59:12 AM Samantha Padgett, Vice President/General Counsel, Florida Retail Federation (waives in support)
9:59:17 AM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
9:59:23 AM Carolyn Johnson, Policy Director, Florida Chamber of Commerce (waives in support)
9:59:31 AM Richard Turner, General Counsel, Florida Restaurant and Lodging Association (waives in support)
9:59:42 AM Michael Daniels, Executive Director, Florida Alliance for Assistive Services and Technology (waives in support)
10:00:02 AM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)
10:01:06 AM S 498
10:01:09 AM Sen. Young
10:01:25 AM Sen. Latvala
10:01:28 AM Sen. Young
10:03:05 AM Sen. Latvala
10:03:08 AM Sen. Powell
10:03:25 AM Sen. Young
10:03:54 AM Sen. Powell
10:03:58 AM Sen. Young
10:04:18 AM Sen. Latvala
10:04:24 AM Sen. Young
10:04:43 AM Sen. Latvala
10:05:44 AM Grace Lovett, Director of Legislative Affairs, Florida Department of Agriculture and Consumer Services
10:05:51 AM Sen. Latvala
10:05:57 AM G. Lovett
10:06:40 AM Sen. Latvala
10:06:55 AM G. Lovett

10:07:00 AM Sen. Latvala
10:07:18 AM G. Lovett
10:07:39 AM Sen. Latvala
10:07:56 AM G. Lovett
10:08:00 AM Sen. Latvala
10:08:07 AM G. Lovett
10:08:09 AM Sen. Latvala
10:08:21 AM S 876
10:08:24 AM Sen. Young
10:09:06 AM Sen. Latvala
10:09:10 AM Am. 926878
10:09:23 AM Sen. Young
10:09:27 AM Sen. Latvala
10:09:43 AM Mary Thomas, Florida Medical Association (waives in support)
10:09:52 AM Alisa Lafort, Lobbyist, Intervention Project for Nurses (waives in support)
10:09:58 AM Alisa Lafort, Lobbyist, Florida Nurses Association (waives in support)
10:10:02 AM Amy Young, Lobbyist, American Congress of OB-GYN's (waives in support)
10:10:08 AM Stephen Winn, Executive Director, Florida Osteopathic Medical Association (waives in support)
10:10:14 AM Ron Watson, Lobbyist, Florida Association of Midwives (waives in support)
10:10:27 AM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)
10:12:38 AM Sen. Latvala
10:14:02 AM S 668
10:14:05 AM Sen. Bean
10:14:58 AM Sen. Flores (Chair)
10:15:09 AM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
10:15:20 AM Brian Logan, Legislative Affairs Director, Board of Governors (waives in support)
10:15:23 AM Bob Boyd, General Counsel, Independent Colleges and Universities of Florida (waives in support)
10:15:28 AM Brittney Hunt, Policy Director, Florida Chamber of Commerce (waives in support)
10:15:45 AM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)
10:16:47 AM Sen. Flores
10:17:03 AM Christopher Wright, Physician Assistant Student
10:18:01 AM Sen. Flores
10:18:18 AM Sen. Bean
10:18:28 AM Sen. Flores
10:19:31 AM S 240
10:19:35 AM Sen. Lee
10:21:48 AM Sen. Flores
10:21:51 AM Am. 183112
10:22:09 AM Sen. Lee
10:23:17 AM Sen. Flores
10:23:23 AM Sen. Powell
10:23:47 AM Sen. Lee
10:23:53 AM Sen. Powell
10:23:56 AM Sen. Lee
10:25:37 AM Sen. Flores
10:25:44 AM S 240 (cont.)
10:25:50 AM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)
10:25:54 AM Chris Nuland, American College of Physicians, Florida Chapter (waives in support)
10:25:57 AM Mary Thomas, Florida Medical Association (waives in support)
10:25:59 AM Sal Nuzzo, Vice President of Policy, The James Madison Institution (waives in support)
10:26:05 AM Stephen Winn, Executive Director, Florida Osteopathic Medical Association (waives in support)
10:26:08 AM Jack Hebert, Government Relations Director, Florida Chiropractic Association (waives in support)
10:26:10 AM Tim Nungesser, Legislative Director, National Federation of Independent Business (waives in support)
10:26:18 AM Aimee Diaz, Florida Academy of Family Physicians (waives in support)
10:26:20 AM Andrew Hosek, Policy Analyst, Americans for Prosperity (waives in support)
10:27:13 AM S 38
10:27:17 AM Sen. Benacquisto
10:28:16 AM Sen. Flores
10:28:19 AM S 494
10:29:11 AM Sen. Bradley
10:29:17 AM Sen. Flores
10:29:31 AM Seth Miller, Executive Director, Innocence Project of Florida (waives in support)

10:29:35 AM Barney Bishop, President/CEO, Florida Smart Justice Alliance (waives in support)
10:29:40 AM Herman Lindsey, Witness to Innocence (waives in support)
10:29:44 AM Nancy Daniels, Legislative Consultant, Florida Public Defender Association, Inc. (waives in support)
10:30:39 AM S 1844
10:30:42 AM Sen. Bradley
10:31:18 AM Sen. Flores
10:31:25 AM Barney Bishop, President/CEO, Florida Smart Justice Alliance (waives in support)
10:31:38 AM Brian Pitts, Trustee, Justice-2-Jesus
10:33:05 AM Sen. Flores
10:33:47 AM S 590
10:33:52 AM Am. 765792
10:33:57 AM Sen. Brandes
10:34:28 AM Sen. Flores
10:34:39 AM S 498 (cont.)
10:34:47 AM Sen. Young
10:35:00 AM Sen. Flores
10:35:01 AM Am. 434084
10:35:09 AM Sen. Young
10:35:27 AM Sen. Flores
10:35:35 AM David Daniel, Florida Surveying and Mapping Society (waives in support)
10:35:46 AM Am. 209084
10:35:51 AM Sen. Young
10:35:59 AM Sen. Flores
10:36:06 AM Am. 761370
10:36:09 AM Sen. Young
10:36:25 AM Sen. Flores
10:36:38 AM S 498 (cont.)
10:36:43 AM Grace Lovett, Director of Legislative Affairs, Florida Department of Agriculture and Consumer Services (waives in support)
10:36:48 AM Rana Brown, Florida Taxicab Association (waives in support)
10:36:59 AM Sen. Book
10:37:10 AM Sen. Latvala
10:38:36 AM Sen. Flores
10:39:38 AM S 1012
10:39:44 AM Sen. Brandes
10:40:03 AM Sen. Flores
10:40:10 AM Am. 167518
10:40:15 AM Sen. Brandes
10:40:21 AM Sen. Flores
10:40:28 AM Am. 311138
10:40:34 AM Sen. Brandes
10:40:42 AM Sen. Flores
10:40:55 AM Am. 589252
10:41:01 AM Sen. Brandes
10:41:25 AM Sen. Flores
10:41:39 AM Jan Gorrie, Lobbyist, CARCO (waives in opposition)
10:41:44 AM Meredith Snowelen, Consultant, Property Casualty Insurance Association of America (waives in support)
10:42:06 AM Sen. Bracy
10:42:19 AM Sen. Flores
10:42:27 AM Am. 167518 (cont.)
10:42:36 AM Ashley Kalifeh, Lobbyist, American Insurance Association (waives in support)
10:42:55 AM S 1012 (cont.)
10:43:03 AM BG Murphy, Deputy Legislative Affairs Director, CFO AtWater (waives in support)
10:43:06 AM Slater Bayliss, The Florida Carpenters Council (waives in support)
10:43:59 AM S 1014
10:44:03 AM Sen. Brandes
10:44:30 AM Sen. Flores
10:45:33 AM S 48
10:45:38 AM Sen. Braynon
10:46:33 AM Sen. Flores
10:46:40 AM Karen Skyers, Attorney, Wendy Smith and Dennis Darling (waives in support)
10:47:34 AM S 1468

10:47:41 AM Sen. Galvano
10:48:19 AM Sen. Flores
10:48:25 AM Am. 755156
10:48:31 AM Sen. Galvano
10:48:47 AM Sen. Flores
10:48:53 AM Suzanne Sewell, President/CEO, Florida Association of Rehabilitation Facilities (waives in support)
10:48:59 AM Tanya Cooper, Director of Governmental Relations, Florida Department of Education (waives in support)
10:49:15 AM Am. 416750
10:49:21 AM Sen. Galvano
10:49:32 AM Sen. Flores
10:49:39 AM Tanya Cooper, Director of Governmental Relations, Florida Department of Education (waives in support)
10:49:46 AM Holly Sagues, Executive Director of Government Affairs, Florida Virtual School (waives in support)
10:49:54 AM S 1468 (cont.)
10:50:12 AM Brian Pitts, Trustee, Justice-2-Jesus
10:51:37 AM Sen. Flores
10:52:28 AM S 50
10:52:31 AM Sen. Gibson
10:53:06 AM Sen. Flores
10:54:11 AM S 1018
10:54:17 AM Sen. Grimsley
10:55:07 AM Sen. Flores
10:55:11 AM Am. 546818
10:55:24 AM Am. 671492
10:55:32 AM Sen. Galvano
10:55:53 AM Sen. Flores
10:56:08 AM S 1018 (cont.)
10:57:00 AM S 916
10:57:03 AM Sen. Grimsley
10:57:39 AM Sen. Flores
10:57:43 AM Am. 188616
10:57:55 AM Am. 424586
10:58:12 AM Sen. Braynon
10:59:09 AM Sen. Flores
10:59:15 AM Am. 565904
10:59:23 AM S 916 (cont.)
11:00:19 AM S 1672
11:00:29 AM Sen. Latvala
11:00:50 AM Sen. Flores
11:01:06 AM Ryan Patmintra, Tampa Bay Partnership (waives in support)
11:01:19 AM Sen. Galvano
11:01:40 AM Sen. Flores
11:02:30 AM S 1670
11:02:35 AM Am. 370410
11:02:40 AM Sen. Latvala
11:03:32 AM Sen. Flores
11:03:37 AM Sen. Gibson
11:04:50 AM Sen. Latvala
11:05:04 AM Sen. Gibson
11:05:57 AM Sen. Latvala
11:06:08 AM Sen. Gibson
11:06:21 AM Sen. Latvala
11:06:57 AM Bob Gualtieri, Sheriff, Florida Sheriffs Association
11:09:43 AM Sen. Flores
11:09:47 AM Sen. Gibson
11:09:59 AM Sen. Flores
11:10:06 AM Barney Bishop, President/CEO, Florida Smart Justice Alliance (waives in support)
11:10:13 AM Meredith Stanfield, Director of Legislative Affairs, Department of Juvenile Justice (waives in support)
11:10:40 AM Melissa Villar, Executive Director, NORML Tallahassee
11:11:38 AM Sen. Flores
11:11:46 AM Am. 631984
11:11:55 AM Sen. Latvala
11:12:27 AM Sen. Flores

11:12:50 AM S 1670 (cont.)
11:13:27 AM S 590 (cont.)
11:13:31 AM Sen. Brandes
11:13:43 AM Sen. Flores
11:14:02 AM Am. 765792 (cont.)
11:14:10 AM Am. 464850
11:14:16 AM Sen. Brandes
11:14:25 AM Sen. Flores
11:14:40 AM S 590 (cont.)
11:14:46 AM Andrea, Attorney, The Florida Bar, Family Law Section (waives in opposition)
11:14:55 AM Mark Anderson, Non-custodial Parent Employment Program (waives in support)
11:16:05 AM S 1144
11:16:17 AM Sen. Montford
11:16:33 AM Sen. Flores
11:16:43 AM Tom Joos, Department of Health (waives in support)
11:16:59 AM Stephen Winn, Executive Director, Florida Osteopathic Medical Association (waives in support)
11:17:41 AM S 780
11:17:42 AM Sen. Stargel
11:17:56 AM Sen. Flores
11:18:49 AM S 844
11:18:58 AM Am. 528916
11:19:03 AM Sen. Simmons
11:19:28 AM Sen. Flores
11:19:34 AM Bob Boyd, Attorney, Archdiocese of Miami, Catholic Cemeteries (waives in support)
11:20:27 AM S 892
11:20:29 AM Sen. Simmons
11:20:49 AM Sen. Flores
11:20:56 AM Barney Bishop, President/CEO, Florida Smart Justice Alliance (waives in support)
11:21:02 AM Nancy Daniels, Legislative Consultant, Florida Public Defender Association, Inc. (waives in support)
11:21:07 AM Colleen Mackin, Constituency Services, The Children's Campaign (waives in support)
11:21:53 AM S 360
11:21:54 AM Sen. Stargel
11:22:06 AM Sen. Flores
11:22:08 AM Am. 362598
11:22:23 AM Sen. Gibson
11:23:08 AM Sen. Stargel
11:23:16 AM Sen. Flores
11:23:21 AM Am. 940270
11:23:30 AM Sen. Stargel
11:23:34 AM Sen. Flores
11:23:41 AM S 360 (cont.)
11:23:46 AM Kelly Quintero, Legislative Advocate, League of Women Voters of Florida (waives in support)
11:23:51 AM Cathy Boehme, Legislative Specialist, Florida Education Association (waives in support)
11:24:51 AM S 28
11:24:57 AM Sen. Simmons
11:25:39 AM Sen. Flores
11:26:37 AM S 928
11:26:39 AM Sen. Stargel
11:26:50 AM Sen. Flores
11:26:55 AM Frank Bernadino, Polk County (waives in support)
11:27:16 AM Tom Singleton, President, Winter Haven Florida (waives in support)
11:27:48 AM S 1050
11:27:53 AM Sen. Simmons
11:28:08 AM Sen. Flores
11:28:14 AM Jean Van Smith, Director of Government Relations, Florida Hospital (waives in support)
11:28:20 AM Brian Pitts, Trustee, Justice-2-Jesus (waives in support)
11:29:16 AM S 880
11:29:19 AM Sen. Stargel
11:29:29 AM Sen. Flores
11:29:36 AM Am. 405834
11:29:41 AM Sen. Stargel
11:29:52 AM Sen. Flores

11:29:58 AM Am. 678562
11:30:01 AM Sen. Stargel
11:30:07 AM Sen. Flores
11:30:22 AM S 880 (cont.)
11:30:26 AM Andrew Hosek, Policy Analyst, Americans for Prosperity (waives in support)
11:31:12 AM Sen. Latvala (Chair)
11:31:18 AM S 406
11:31:22 AM Sen. Bradley
11:31:39 AM Sen. Latvala
11:31:44 AM Am. 832708
11:31:58 AM Sen. Bradley
11:34:12 AM Sen. Latvala
11:34:21 AM Sen. Bracy
11:34:41 AM Sen. Bradley
11:35:47 AM Sen. Bracy
11:35:53 AM Sen. Bradley
11:36:27 AM Sen. Bracy
11:36:42 AM Sen. Bradley
11:37:13 AM Sen. Bracy
11:37:26 AM Sen. Bradley
11:37:54 AM Sen. Gibson
11:38:17 AM Sen. Bradley
11:38:41 AM Sen. Gibson
11:39:33 AM Sen. Bradley
11:40:21 AM Sen. Gibson
11:40:23 AM Sen. Bradley
11:40:53 AM Sen. Flores
11:41:05 AM Am. 225574
11:41:14 AM Sen. Bradley
11:41:35 AM Sen. Flores
11:42:00 AM John Hightower, Paralegal
11:42:24 AM Sen. Flores
11:42:37 AM Am. 427570
11:42:42 AM Sen. Bradley
11:42:47 AM Sen. Flores
11:43:06 AM Am. 974884
11:43:08 AM Sen. Bradley
11:43:36 AM Sen. Flores
11:44:08 AM Am. 427690
11:44:17 AM Sen. Brandes
11:44:42 AM Sen. Flores
11:44:57 AM Sen. Bradley
11:46:03 AM Sen. Flores
11:46:06 AM Sen. Latvala
11:46:17 AM Sen. Bradley
11:46:40 AM Sen. Flores
11:46:51 AM Roz McCarthy, President, Minorities for Medical Marijuana (waives in support)
11:47:08 AM Sen. Brandes
11:48:50 AM Sen. Flores
11:48:53 AM Am. 900914
11:48:58 AM Sen. Bradley
11:49:27 AM Sen. Flores
11:49:34 AM Roz McCarthy, President, Minorities for Medical Marijuana
11:50:28 AM Sen. Flores
11:50:44 AM Sen. Bradley
11:51:03 AM Sen. Flores
11:51:15 AM Am. 877586
11:51:19 AM Sen. Bradley
11:52:26 AM Sen. Flores
11:52:50 AM Am. 368518
11:53:03 AM Sen. Braynon
11:54:05 AM Sen. Flores

11:54:18 AM Am. 338004
11:54:27 AM Sen. Bracy
11:55:05 AM Am. 368518 (cont.)
11:55:10 AM Ben Pollara, Executive Director, Florida for Care
11:56:45 AM Sen. Flores
11:56:53 AM Roz McCarthy, President, Minorities for Medical Marijuana (waives in support)
11:57:01 AM Sen. Bradley
11:57:05 AM Sen. Flores
11:57:17 AM S 406 (cont.)
11:57:32 AM Sen. Brandes
11:57:48 AM Sen. Bradley
11:59:24 AM Sen. Brandes
11:59:40 AM Sen. Bradley
11:59:54 AM Sen. Brandes
12:00:01 PM Sen. Bradley
12:00:22 PM Sen. Brandes
12:00:33 PM Sen. Bradley
12:01:16 PM Sen. Brandes
12:01:21 PM Sen. Bradley
12:01:25 PM Sen. Brandes
12:01:37 PM Sen. Bradley
12:02:06 PM Sen. Brandes
12:02:26 PM Sen. Bradley
12:02:55 PM Sen. Brandes
12:03:03 PM Sen. Bradley
12:03:27 PM Sen. Brandes
12:03:37 PM Sen. Bradley
12:03:51 PM Sen. Powell
12:04:32 PM Sen. Bradley
12:05:15 PM Sen. Powell
12:05:51 PM Sen. Bradley
12:06:21 PM Sen. Book
12:06:55 PM Sen. Bradley
12:07:50 PM Sen. Flores
12:07:59 PM Alexander Golden, Consultant, Thornton and Thornton Partners (waives in support)
12:08:07 PM Barney Bishop, President/CEO, Florida Smart Justice Alliance (waives in support)
12:08:10 PM Chief Jeffrey Chudnow, Chief of Police, The Florida Police Chiefs Association (waives in support)
12:08:20 PM Ron Watson, Lobbyist, AHMed, Cannavision and SLGT, Inc. (waives in support)
12:08:27 PM John Hightower, Paralegal (waives in opposition)
12:08:36 PM Jimmy Johnston, Weed for Warriors Project
12:09:29 PM Sen. Flores
12:09:43 PM Gary Stein, Subject Matter Expert
12:12:00 PM Sen. Flores
12:12:20 PM Jared Bambis, Master Cultivator/Caregiver
12:15:26 PM Sen. Flores
12:15:31 PM Ben Pollara, Executive Director, Florida for Care (waives in support)
12:15:38 PM Roz McCarthy, President, Minorities for Medical Marijuana (waives in support)
12:15:40 PM Louis Rotundo, CBSY, Inc. (waives in support)
12:15:43 PM Michael Bowen, Director, Epilepsy Foundation of Florida (waives in support)
12:16:01 PM Stephani Scruggs Bowen, Epilepsy Foundation
12:20:52 PM Sen. Simpson
12:21:06 PM Sen. Flores
12:21:23 PM Brian Pitts, Trustee, Justice-2-Jesus
12:23:10 PM Sen. Flores
12:23:22 PM Dennis Deckerhoff, Parent; Patient Advocate
12:25:13 PM Sen. Flores
12:25:19 PM Melissa Villar, Executive Director, NORML Tallahassee
12:26:43 PM Sen. Flores
12:26:48 PM Jodi James, Executive Director, Florida Cannabis Action Network (waives in support)
12:26:57 PM Sen. Gibson
12:27:34 PM Sen. Flores
12:27:39 PM Sen. Bracy

12:27:52 PM Sen. Flores
12:27:54 PM Sen. Bradley
12:30:07 PM Sen. Flores
12:30:59 PM Sen. Latvala (Chair)
12:31:09 PM S 842
12:31:17 PM Sen. Galvano
12:31:33 PM Sen. Latvala
12:31:35 PM Am. 326920
12:32:09 PM Sen. Galvano
12:32:15 PM Am. 859032
12:32:28 PM Sen. Latvala
12:32:34 PM Vicki Wooldridge, Government Affairs Manager, South Florida Regional Transportation Authority (waives in support)
12:32:41 PM Andres Truvillo, Legislative Director, SMART-Transportation Division (waives in support)
12:32:56 PM Jess McCarty, Assistant County Attorney, Miami-Dade County (waives in support)
12:33:02 PM Russeu Roberts, Vice President of Government Affairs, Florida East Coast Industries (waives in support)
12:33:06 PM Jack Cory, Lobbyist, Stiles (waives in support)
12:33:10 PM Dave Ericks, Lobbyist, South Florida Transportation Authority (waives in support)
12:33:32 PM S 842 (cont.)
12:34:23 PM S 1562
12:34:26 PM Sen. Garcia
12:34:31 PM Sen. Latvala
12:34:35 PM Am. 424970
12:34:42 PM Am. 972232
12:34:53 PM Sen. Garcia
12:35:34 PM Sen. Latvala
12:35:50 PM Candice Ericks, Broward and Palm Beach County (waives in support)
12:35:51 PM Jess McCarty, Assistant County Attorney, Miami-Dade County (waives in support)
12:36:15 PM S 1562 (cont.)
12:37:14 PM S 894
12:37:17 PM Sen. Simmons
12:37:34 PM Sen. Latvala
12:37:41 PM Barney Bishop, President/CEO, Florida Smart Justice Alliance (waives in support)
12:37:46 PM Nancy Daniels, Legislative Consultant, Florida Public Defender Association, Inc. (waives in support)
12:38:50 PM S 1458
12:38:52 PM Sen. Simmons
12:39:05 PM Sen. Latvala
12:39:18 PM Tanya Cooper, Director of Governmental Relations, Florida Department of Education (waives in support)
12:40:06 PM S 150
12:40:11 PM Sen. Steube
12:40:24 PM Sen. Latvala
12:40:43 PM Am. 531844
12:41:00 PM Am. 145864
12:41:17 PM Sen. Steube
12:41:25 PM Sen. Latvala
12:41:30 PM Sen. Steube
12:42:10 PM Sen. Latvala
12:42:30 PM Sen. Bracy
12:42:55 PM Sen. Latvala
12:42:59 PM Sen. Steube
12:43:51 PM Sen. Bracy
12:44:25 PM Sen. Steube
12:44:40 PM Sen. Latvala
12:44:54 PM Sen. Simpson
12:45:02 PM Sen. Latvala
12:45:05 PM Am. 355094
12:45:22 PM Sen. Brandes
12:46:03 PM Sen. Latvala
12:46:25 PM S 145864 (cont.)
12:46:32 PM Andrew Fay, Special Counsel, Department of Legal Affairs (waives in opposition)
12:46:38 PM Nancy Daniels, Legislative Consultant, Florida Public Defender Association, Inc. (waives in support)
12:46:48 PM Bob Guiltieri, Sheriff, Florida Sheriffs Association

12:47:13 PM Sen. Latvala
12:47:21 PM Chief Jeffrey Chudnow, Chief of Police, The Florida Police Chiefs Association (waives in support)
12:47:30 PM Buddy Jacobs, General Counsel, Florida Prosecuting Attorneys Association (waives in support)
12:47:38 PM Barney Bishop, President/CEO, Florida Smart Justice Alliance (waives in support)
12:47:47 PM Lisa Hurley, Florida Association of Counties (waives in support)
12:47:52 PM Jill Gran, Policy Director, Florida Behavioral Health Association (waives in support)
12:48:03 PM S 150 (cont.)
12:48:13 PM Sen. Bracy
12:48:35 PM Sen. Gibson
12:49:17 PM Sen. Latvala
12:49:31 PM Sen. Steube
12:49:41 PM Sen. Latvala
12:49:53 PM S 145864 (cont.)
12:50:16 PM S 150 (cont.)
12:51:19 PM S 1552
12:51:26 PM Sen. Simmons
12:52:06 PM Sen. Latvala
12:52:20 PM Am. 558178
12:52:32 PM Am. 736668
12:52:37 PM Sen. Montford
12:52:52 PM Sen. Latvala
12:53:18 PM S 1552 (cont.)
12:54:19 PM S 796
12:54:22 PM Sen. Bean
12:54:49 PM Sen. Latvala
12:55:00 PM Am. 406464
12:55:04 PM Sen. Bean
12:55:21 PM Sen. Latvala
12:55:25 PM Am. 821780
12:55:30 PM Sen. Montford
12:55:40 PM Sen. Latvala
12:55:52 PM Am. 740332
12:56:01 PM Sen. Montford
12:56:14 PM Sen. Latvala
12:56:22 PM Sen. Bean
12:56:37 PM Sen. Latvala
12:56:43 PM Am. 406464 (cont.)
12:57:09 PM Marie Claire Leman, Common Ground (waives in opposition)
12:57:13 PM Beth Overholt, Opt Out Florida Network (waives in support)
12:57:18 PM Catherine Baer, The Tea Party Network/Common Ground (waives in opposition)
12:57:37 PM Cathy Boehme, Legislative Specialist, Florida Education Association
12:57:59 PM Sen. Flores
12:58:10 PM C. Boehme
12:59:02 PM Sen. Latvala
12:59:26 PM S 796 (cont.)